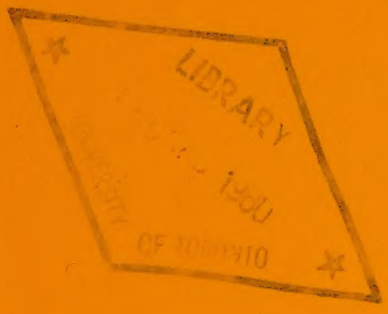
June 1980

The Report of a Commission to Review the Collective Negotiation Process Between Teachers and School Boards



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Commission to Review the Collective
Negotiation Process Between Teachers
and School Boards

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Toronto, June 18, 1980

The Honourable Bette Stephenson, M.D.
Minister of Education for the Province of Ontario
Toronto, Ontario

Dear Madam Minister:

We, the members of A Commission to Review the Collective Negotiation Process Between Teachers and School Boards in the Province of Ontario, have the honour to submit our Report.

In accordance with our terms of reference, we have examined and evaluated The School Boards and Teachers Collective Negotiations Act, 1975; received representations from interested organizations and individuals; and considered suggestions for changes and improvements in the Act or in the processes under the Act which the government should consider, having in mind the public interest in an effective educational system and the rights of teachers to equitable remuneration and conditions of employment.

This Report is based primarily on an evaluation and study of the views and opinions expressed to the Commission, rather than on extensive independent research studies.

The content of the Report has the full support of all members of the Commission with the exception of one dissent on fact finding, mediation, and certain related matters. In writing the final Report, there were some differences of opinion on style and format. In such instances, the decision of the Chairman prevailed.

We trust this Report will prove useful to you, and your colleagues, in helping to chart the future course of school board-teacher relations in this Province.

Yours respectfully,

B. C. Matthews
Chairman

John Crispo

R. D. Fraser

THE REPORT

OF

A COMMISSION TO REVIEW THE COLLECTIVE NEGOTIATION PROCESS BETWEEN TEACHERS AND SCHOOL BOARDS

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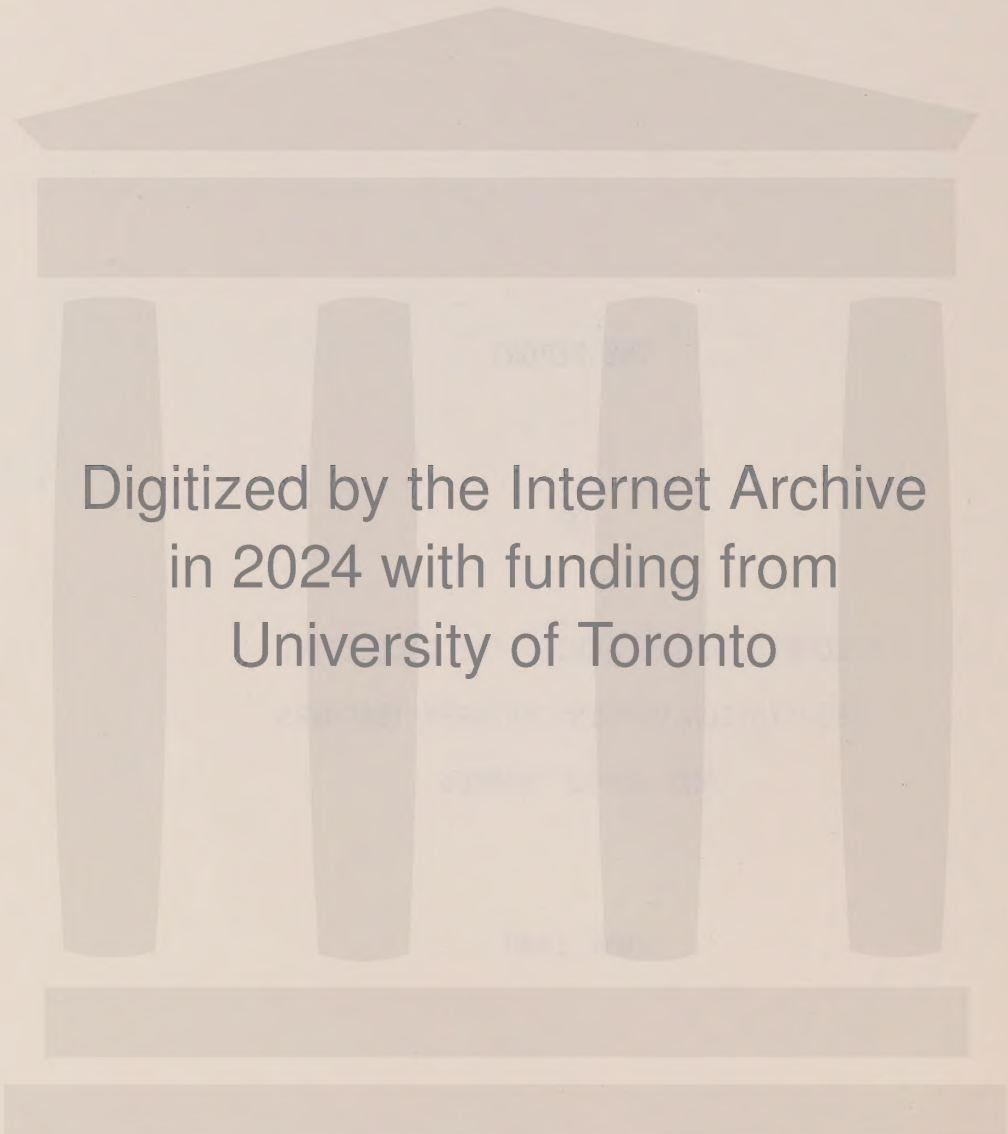

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A. ACKNOWLEDGEMENTS

The Commission expresses its appreciation to the many organizations and individuals who presented briefs and in other ways gave the Commission the benefit of their opinions and experience. The thoughtful communications sent to the Commission and the active participation of many people in the public hearings were invaluable to the Commission as it shaped its recommendations and prepared this report.

The Commission is indebted to its staff members for their unfailing support. Mr. Craig Crawford, our Research Officer, drawing on his extensive knowledge of teacher-board negotiations, was especially helpful in the early stages of the work by placing before the Commission a number of pertinent documents, books and research papers, and later by assisting in the analysis of the briefs and finally in the writing of this report.

Miss Shirley Takefman was our efficient office secretary who typed the several drafts and the final report.

Finally the Commission expresses its appreciation to Mr. W. C. VanderBurgh, Secretary to the Commission, for his effective management of the Commission office, arrangement of the public hearings, handling of the voluminous office correspondence and assistance in the preparation of this report.

Needless to say none of the aforementioned is to be held accountable in any way for the final product of our efforts.

B. TERMS OF REFERENCE

On October 30, 1979, the Honourable Bette Stephenson, M.D., through a statement to the Legislature, announced the establishment of a Commission under section 9 of The Education Act, 1974, to review the collective negotiation process between teachers and school boards.

The Minister's statement to the Legislature reads as follows:

"Mr. Speaker:

I am pleased to announce today the establishment of a Commission under The Education Act (Section 9) to review the collective negotiation process between teachers and school boards.

The School Boards and Teachers Collective Negotiations Act has been in force since July 18, 1975. Before that time there was uncertainty and disruption in teacher-board relations. A decision of the courts was required to confirm the rights of teachers to withdraw their services. The Act, when introduced, provided for the first time, a legally defined, equitable and reasonable framework within which teachers and trustees could pursue their goals through the collective bargaining process. The Act has improved that process in many ways. It has unquestionably reduced the number of occasions when a breakdown in negotiations has led to strikes and other sanctions. In the three years before the passage of the Act, there were 28 cases which would now be defined as strikes or lockouts. In the four years since the Act was passed, there have been over 900 settlements, with only 18 strikes or lockouts.

In our society there are basic rights to collective bargaining and there is no question of compromising those rights in the case of teachers. However, like all policies of government, the Act, and the process it engenders, should be periodically reviewed.

An Internal Review by Ministry officials has indicated certain technical problems in the present Act for which alternative arrangements should be considered. But in addition, there are broader considerations, relating to the basic rationale of the collective negotiation process, as it is now conducted, that have been consistently raised whenever the Act has been discussed and which are of continued concern to the parties in the negotiation process and to the general public.

For this reason, Mr. Speaker, I felt that a Commission should be established to examine the collective negotiation process as it has developed under the present legislation.

The Government has been fortunate in being able to secure the services of an outstanding group of Commissioners. The Chairman of the Commission will be Dr. B. C. Matthews, the President of the University of Waterloo. Serving with Dr. Matthews will be Dr. Roderick Fraser of the Department of Economics of Queen's University and Dr. John Crispo of the Faculty of Management Studies of the University of Toronto. Mr. W. C. VanderBurgh, the recently retired Director of the Ministry of Education's former Supervisory Services Branch, will act as Secretary to the Commission.

Terms of Reference for the Commission

On completion of their review and inquiry, the Commission shall recommend measures that the Government should consider in relation to collective negotiations for teachers employed in elementary and secondary schools, having in mind the general public good and the rights of teachers to just and equitable remuneration and conditions of employment and include in the report a response to the following specific issues:

1) Whether negotiations between school boards and teachers should continue on the basis now provided under The School Boards and Teachers Collective Negotiations Act, 1975 and, if so, what changes, if any, should be made to facilitate the operation of the collective bargaining process in the light of experience to date;

2) Whether negotiations should be conducted on some other basis, and, if such other bases are recommended,

   A) Who should be the parties to the negotiations, and,

   B) The manner in which the negotiation process should be carried out;

3) Whether elementary and secondary school teachers employed by a board of education should negotiate separately or together;

4) What restrictions, if any, should be placed by legislation on the items that may be included in collective agreements between school boards and teachers;

5) Whether the sanctions available under The School Boards and Teachers Collective Negotiations Act, 1975, are appropriate or whether they should be defined in greater detail.

The Commission shall also consider and make recommendations as to what relationship should exist between the collective agreement and the individual teacher's contract.

It should be noted that the Commission will be examining only the collective negotiation process between teachers and school boards. Its recommendations, if acted upon, may have implications for the collective negotiation process as it now applies to Colleges of Applied Arts and Technology and to the Provincial Schools Authority. If this is the case, the policy in these areas will be reviewed by a separate process.

Gathering of Information

The Commission to Review the Collective Negotiation Process Between Teachers and School Boards has been charged to inquire into and report to the Minister of Education upon the matters outlined in their terms of reference and in so doing to:

1) Take into consideration the results of the Ministry of Education's Internal Review of the Act;

2) Invite and take into consideration written submissions and oral presentations related thereto from:

   A) The Ontario School Trustees' Council and its member associations,

   B) The Ontario Teachers' Federation and its affiliates,

   C) The Education Relations Commission,

   D) Officials and others who have been involved in collective negotiations between teachers and school boards, and

   E) Other individuals or organizations the Commission feels may facilitate its work and for this purpose hold meetings in Toronto and one location in each of the Ministry of Education Administrative Regions as may be judged necessary and convenient by the Commission.

Time Line

The Commission will report as soon as practicable. I hope that will be no later than the Spring of next year. The Commission's Report will be published by the Ministry.

The schedule of work and hearings, the budget and the location of the Commission's offices have not yet been established but will, of course, be announced as soon as possible.

The public and the educational community, as well as the Government, will look forward with great interest to the recommendations of the Commissioners and will, I know, extend the fullest co-operation in facilitating their work.

For this work, which I know will involve considerable personal dedication on the part of the Commissioners, I thank them in advance.

Thank you, Mr. Speaker."

The Orders-in-Council approving the establishment of the Commission are included as Appendix I.

C. PROCEDURE OF THE COMMISSION

The inaugural meeting of the Commission was convened on November 20, 1979. The terms of reference (Appendix I) for the Commission were discussed with the Minister, and a budget and plan of action were prepared.

On December 17, 1979, an advertisement "Invitation for Briefs" (Appendix II) appeared in fifteen daily newspapers across the province. The final date for the receipt of written briefs was given as January 31, 1980, but subsequently, this date was relaxed to February 29, 1980. A copy of "Information regarding briefs" (Appendix III) was distributed to all groups, organizations and individuals expressing interest, including those organizations which were sent individual invitations to participate.

On February 27, 1980, a second advertisement, entitled "Notice of Hearings" (Appendix II) was placed in the same fifteen daily newspapers. This advertisement announced public hearings in Toronto on March 5, 6, 7, 12, 13 and April 8; in Ottawa on March 14; in London on March 19; in Thunder Bay on March 21; in Sudbury on March 25 and in North Bay on April 2. Simultaneous translation facilities were provided for the hearings in Toronto on March 12.

The names of the organizations and individuals presenting briefs are listed in Appendix IV.

In addition to the briefs received, the Commission reviewed relevant information from various sources, including the Ministry of Education's internal review of The School Boards and Teachers Collective Negotiations Act, 1975. Data made available by the Education Relations Commission were especially helpful. We also reviewed previous Commission investigations, a number of pertinent articles and books and a variety of other materials.

The Commission's mandate did not include the initiation of research studies into the various facets of our terms of reference. Therefore, this report is based primarily on the Commission's careful consideration of briefs, communications, and opinions expressed by teachers, trustees, parents, students, and others at the hearings held throughout the province.

D. BRIEF HISTORICAL BACKGROUND

The history of collective bargaining in Ontario's elementary and secondary school system has already been well documented in two recently published books.[1] It is therefore unnecessary to restate, in detail, the historical record here. However, a brief discussion of the key events leading the enactment of The School Boards and Teachers Collective Negotiations Act, 1975 (hereinafter referred to as "Bill 100") may provide some perspective for evaluating and understanding the record under the legislation to date.

The system of collective bargaining between teachers and school boards in Ontario evolved slowly over the last century. In the 1800's, teachers were hired on a short-term basis, with no contract or job security. School boards unilaterally, and sometimes arbitrarily, established salary levels and terminated employment, a practice which continued up to World War II, despite the formation of various provincial teacher associations after World War I, and the issuance of a recommended standard form of teacher contract by the Department of Education in 1931.

By 1940, there was a growing awareness of the need to upgrade the professional nature of teaching. In 1944, the Ontario Government passed The Teaching Profession Act. This legislation brought together the four existing provincial teacher associations - the Federation of Women Teachers' Associations of Ontario (FWTAO), the Ontario Public School Men Teachers' Federation (OPSMTF), the Ontario Secondary School Teachers' Federation (OSSTF), and L'Association des Enseignants Franco-Ontariens (AEFO) as well as the then newly formed Ontario English Catholic Teachers' Association (OECTA) - under an umbrella organization known as the Ontario Teachers' Federation (OTF). Each of the Associations was given affiliate status within OTF. All teachers, including principals and vice-principals, were required to be members of OTF, and school boards were required to collect federation dues and submit them to

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[1]Brian M. Downie, Collective Bargaining and Conflict Resolution in Education: The Evolution of Public Policy in Ontario, Research and Current Issues Series No. 36 (Kingston, Ont.: Industrial Relations Centre, Queen's University, 1978).
Peter Hennessy, Schools in Jeopardy: Collective Bargaining in Education (Toronto: McClelland and Stewart, 1979).

OTF. The compulsory membership and dues check-off, combined with the associations' power to discipline their members for breach of "professional ethics", gave the teachers' federations additional organizational strength.

For the next twenty-five years, the teachers' federations worked toward improving the salaries of teachers. Initially their prime effort was to establish minimum starting salaries. Later, there was a drive toward creating a standard salary grid with higher salaries for teachers with additional educational qualifications, and with regular salary increments for increased experience. After considerable progress on the salary front the teachers' federations by the 1960's were beginning to shift their attention toward improving other working conditions.

The 1950's and 1960's were years of great advancement in the teaching profession. The post-war baby boom brought increasing numbers of children into the education system, and a resultant heavy demand for teachers which led many boards to compete intensively for the best qualified teachers. Salaries rose, better benefit plans were offered, and efforts were made to improve other working conditions. Money was available to finance the improvements, and as a result, teacher-school board relationships were relatively tranquil.

In 1969, approximately 1400 school boards were consolidated into 77 boards of education and 49 separate school boards. Although the main purpose of the reorganization was to achieve equal educational opportunity for all children, greater efficiency and economy in administration, and decentralized decision-making, it also altered the informal interpersonal relationships which had existed between teachers and trustees. In his recent book, Schools in Jeopardy: Collective Bargaining in Education, Peter Hennessy describes the relationships that existed prior to 1969:

> The principals and teachers knew the trustees in their private capacities as store operators, insurance agents, farmers, or lawyers. A lot of trustee-teacher talk took place over the store counter, at the curling rink, or after church on Sunday....Those personal relationships greatly influenced the educational life of the community. The teachers generally trusted the board because they knew each other as persons. Each side

> wanted to do the 'right thing' for the other allowing, of course, for occasional stress associated with salary increases, the firing of an incompetent teacher, or the fixing up of the school building. There was a sense of common trustee-teacher interest in education and a recognition by each that the other was pulling in the same direction.[2]

The profound effects of the 1969 school board reorganization on teacher, trustee, and administrative officials' relationships were emphasized by both the Ontario School Trustees' Council and the Ontario Teachers' Federation in their briefs to this Commission. The following excerpt from the OTF brief expresses its view of some of these effects.

> Almost overnight, the inter-personal relationships that had existed between schools, staffs and local boards of education disappeared, as school systems were transformed into large administrative units, in some cases covering several thousand employees. The change was dramatic. No longer was the informal method of establishing salaries available to the employer and employee. The agreements became complex and closely followed models of union agreements, much to the dismay of many teachers who considered this form of organization alien to their traditional perception of teaching. The result was inevitable. Distance between employer and employee, coupled with the growth of central administration, resulted in detachment and loss of direct contact between teachers and supervisory officers.[3]

The costs of education began to rise dramatically during the 1970's, further straining teacher-trustee relationships. Inflation and the general improvement in teacher salaries were obvious factors involved. The establishment of salary grids offering increased salaries to teachers with higher educational qualifications provided a strong incentive to teachers to upgrade their qualifications during the summer months. The Ministry of Education required that any teacher entering the teaching profession after 1971 have a minimum of one year university training, and later in 1973, that a university degree be the minimum requirement. There was also a reduction in the number of women teachers leaving the profession, especially in the elementary panel, as more and more of them began to view teaching as a career. This reduction in turnover increased costs because more women were advancing to higher salary levels with their acummulating teaching experience.

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[2] p. 51.

[3] p. 94.

As the competition for qualified teachers intensified in the early 1970's some of the wealthier school boards were able to gain a real advantage. In an attempt to contain the escalating costs, the Ontario government applied spending ceilings in 1973 which allowed boards which were less affluent the opportunity to catch up. These ceilings proved so effective that they prevented the teachers' salaries from keeping up with the rising cost of living.

These circumstances led the teachers' federations to re-establish salary increases as a priority objective while still pressing for other improved working conditions. Further aggravating the situation was their demand for increased job security in the face of declining school enrolments that began to occur more extensively after 1973. The increasing militancy of the federations was met with firm resistance from school boards which were trying to hold down costs and to preserve management rights, e.g. to determine numbers and deployment of teaching staff.

In 1970, the Ministry of Education had set up a "Committee of Inquiry into Negotiation Procedures Concerning Elementary and Secondary Schools of Ontario". The Committee's report,[4] subsequently called the "Reville Report", was released by the Ministry on September 13, 1972. It proved unacceptable to teachers because it advocated a limited scope to negotiations and compulsory binding arbitration as a substitute for the right to strike. In the wake of adverse reaction, by the teachers as well as by some trustees, the Government was persuaded not to use the report as the basis for legislation.

As negotiations between teachers and school boards became more intense during the late 1960's and early 1970's, a variety of sanctions came to be applied when local bargaining impasses occurred. A teachers' federation, for example, would declare the negotiations "in dispute" and a form letter printed on pink or grey paper, depending upon the particular federation involved, would be sent to all of its members advising them to refuse employment with the board in question. If this advice was not followed, members were warned, they could not receive the support of the federation in the event of any future difficulties with the board.

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[4] Professional Consultation and the Determinants of Compensation for Ontario Teachers (Toronto: Ministry of Government Services, June, 1972).

Pink or grey listing was often accompanied by threatened mass resignations. (The individual teacher's contract specifies that a teacher may resign only on December 31st or August 31st, and that notice must be given by November 30th or May 31st, respectively.) Resignations would be collected in advance by the teacher negotiators, and used as a threat until the deadline for receipt of the notices was reached. When the pink or grey listing and mass resignations were used in concert, a board could be threatened with having no teachers on staff to run its schools in either September or January.

Although these sanctions were first used in 1947, they became more frequent in the late sixties. They were, in essence, a form of strike, but much more potent. In a period of teacher shortages, teachers could threaten to resign knowing that they could obtain employment with other boards, leaving the board in dispute incapable of staffing its schools.

To reduce the impact of these threats, the trustees developed their own sanctions. Teachers who threatened to resign en masse were "black listed". That is, the Ontario School Trustees' Council sent out notices to school boards requesting them not to hire any of the teachers who had threatened to resign. To blunt the effects of pink or grey listing, the boards also attempted to hire retired teachers, or teachers who belonged to other affiliates.

These counter-sanctions led to a whole new cycle of conflict escalation. The teachers initiated "double pink listing". This involved a notice by the OTF to retired teachers and members of all the affiliates indicating that if they accepted a position with a board designated as being in dispute, they could risk being expelled from OTF, and thus be precluded from teaching anywhere in Ontario. The trustees, in turn, extended their sanctions to include a provincial moratorium on hiring.

Because of the trustees' use of counter-sanctions and changes in the market brought on by declining school enrolments, the teachers began to experiment with new bargaining tactics. A province-wide walkout and study session, and provincial rotating

strikes were contemplated, although never carried out. There was, however, a considerable amount of experimentation with work to rule strategies.

The greater frequency and scope of sanctions, and their tendency to escalate and ultimately involve the whole province, caused a further deterioration in teacher-trustee relationships. A crisis was reached in 1973 when approximately 8000 teachers from 17 school boards submitted their resignations effective December 31, 1973.

The government responded to this threat of massive disruption of the education system by tabling two pieces of legislation on December 10, 1973. Bill 274 was designed to defer the effective date of the mass resignations, while Bill 275 was designed to provide some order to teacher-trustee negotiations. Under the proposed Bill 275, teachers would have the right to negotiate all terms and conditions of work, but would not have the right to strike. Unresolved disputes would be settled by compulsory binding arbitration. The anxiety and hostility created by these two Bills resulted in a massive province-wide walk-out by the teachers and a demonstration by approximately 30 000 of them in front of the legislature on December 18, 1973. Both Bills subsequently died on the Order Paper.

During 1974 and 1975, the government consulted with both parties in an effort to arrive at an acceptable solution to regulating teacher-trustee negotiations. The outcome of these discussions was Bill 100, an innovative piece of legislation that was supported by all three parties of the Ontario Legislature. The objectives of Bill 100 were stated by the then Minister of Education, the Honourable Thomas L. Wells:

> "The over-riding objectives of this Bill are to lay down fair and workable ground rules for orderly collective bargaining between teachers and school boards, and to lay the foundation for successful negotiations by reasonable people bargaining in good faith.
>
> "I believe that this Bill achieves these objectives. In a clear step-by-step manner, it outlines procedures to regulate the bargaining process. It provides innovative measures to avoid bargaining impasses, it offers

practical alternatives to confrontation at every step, and it recognizes clearly the realities of collective bargaining in the field of education.

"Once this legislation takes effect and its provisions become operative in the bargaining process, we in Ontario will see more order in a situation that has been somewhat chaotic and unsettled in the last two or three years.

"This legislation is based on a second set of 3R's for the 1970 - rights, reason and responsibility.

"In assuring certain rights to teachers and to school boards, we expect that the bargaining process will be carried out in a reasoned and responsible fashion by persons of good will and with constant reference to the heavy responsibilities each bears for the education of our young people.

"If this is indeed the case, as I hope and expect that it will be, then this legislation will work as a significant and necessary forward step in a return to more harmonious relationships between teachers and school boards in the province."[5]

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[5]Ontario Debates, 29th Parliament, Fifth Session, May 30, 1975, p. 2377.

E. SUMMARY OF LEGISLATION

Bill 100 provides for local bargaining between teachers and their school boards. Broader-based bargaining, for example on a regional level, is also permitted provided that both parties voluntarily agree.

All collective agreements under Bill 100 begin on September 1, and terminate on August 31, and must be of at least one year's duration. The scope of bargaining is open and can include any item put forward by either party. Every agreement must contain a clause preventing strikes or lock-outs from occurring during the term of the agreement. In addition, every agreement must contain a method for arriving at a final and binding settlement of all grievances arising out of the interpretation, application, administration, or alleged contravention of the agreement.

Under Bill 100 the teachers have the legal right to strike, a strike being defined as any withdrawal of services, work to rule, mass resignation, or other concerted activity designed to bring pressure to bear upon a school board to reach settlement. The boards, on the other hand, have the right to lock out, but only in response to strike action by the teachers. Furthermore, when a collective agreement has expired and sixty days have elapsed after the fact finder's report has been made public, a school board may unilaterally alter the terms of the expired collective agreement.

Although principals and vice-principals are members of the teachers' branch affiliate, they are required under Bill 100 to remain on duty during a strike, lock-out or closing of the school(s).

Third-party assistance, in the form of mediation and fact finding, is available to the parties to help them reach settlement. Voluntary binding arbitration and final-offer selection are also provided as alternatives to the use of sanctions.

Bill 100 also structures the timing of the negotiations process. Either party may give written notice to the other party, within the month of January, of its desire to negotiate a new

agreement. The parties are then required to meet within thirty days from the giving of notice, must negotiate in good faith and make every reasonable effort to reach agreement.

If a settlement has not been reached by the time the agreement expires on August 31, the ERC must appoint a fact finder. The fact finder must write a report setting out the issues agreed upon, and the items still in dispute.

The report, which may or may not contain non-binding recommendations, must be submitted to the ERC within thirty days of the appointment. Copies of the report are given to each of the parties, and if agreement then is not reached in fifteen days, the report is made public. Fifteen days after the fact finder's report has been released to the public, the teachers may request the ERC to supervise a strike vote. If the vote is in favour of strike action, the local branch affiliate that represents the teachers must give written notice to the board stating the date on which the strike will commence. This notice must be given at least five days before the start of a strike.

The Education Relations Commission (ERC), referred to above, is a non-partisan body, established under Bill 100 to administer the legislation. The duties of the ERC include the following:

- monitoring the negotiations process;
- supplying both parties with objective collective bargaining information;
- training third-party neutrals, i.e., mediators, fact finders, arbitrators and final-offer selectors;
- making determinations about good-faith bargaining;
- conducting supervised secret ballots, e.g., last offer and strike votes; and
- advising the Lieutenant Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or closing of the school(s) will jeopardize the students' chances of successfully completing their courses of study.

F. RECORD TO DATE

In evaluating the record to date under Bill 100, it is important to recognize that it was never intended nor expected to eliminate conflict completely. Its purposes were to provide structure and stability to a process that had become increasingly characterized by disorder and confusion; to legitimize the bargaining customs and practices which were emerging in education and to introduce some innovations in dispute resolution intended to protect the public interest.

The legislation was intended to provide a framework within which the parties are required to resolve their differences. Indeed, many of the factors which gave rise to conflict prior to the legislation continued to affect bargaining after Bill 100 was passed. Factors already mentioned include the consolidation of school boards in 1969, escalation of education costs, and the impact of inflation.

In addition, the Provincial Government, in an effort to control the costs of education, limited the increase in provincial education grants to a level below the rate of inflation. This resulted in a gradual shift in the responsibility for financing education to the local ratepayer. As the OTF Brief points out:

> These modifications fuelled potential conflicts in negotiations. Teachers seeking protection against rising inflation did not wish to see further erosion of their purchasing power. Trustees charged with administering systems with declining financial resources were under great pressure to limit property-tax increases because of general resistance from ratepayers and pressures from municipal politicians and the media. Tax increases in excess of cost-of-living increases were required simply to maintain school programmes.
>
> This change in government policy substantially increased the difficulties inherent in the collective bargaining process during a period of high inflation.[6]

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[6] p. 4.

Furthermore, declining school enrolments in many parts of the province have added to the complexity of negotiations as sensitive issues such as school closures, program elimination, job security, lay-off procedures and other related working conditions have become more pressing issues.

The Federal Anti-Inflation Act, which was enacted three months after Bill 100 and which continued for three years, created further problems. There is a widespread belief among the teachers and trustees that The Anti-Inflation Act undermined the collective-bargaining process, rendered third-party assistance largely ineffectual, and perpetuated salary inequities that had to be corrected when the controls were removed.

In spite of these problems, virtually all of the briefs submitted to this Commission and most of the opinions expressed at the public hearings claimed that Bill 100 had improved the collective-bargaining process and had reduced the level of conflict between teachers and boards. A comparison of the frequency of strikes before and after the Bill seems to support this view. In the three-year period prior to the Bill, 28 strikes took place, while in the four years following its passage, only 18 strikes occurred. A total of 811 sets of negotiations took place in the first four years after Bill 100 was enacted. Approximately 98 percent of these negotiations reached settlement without the use of sanctions.

The record for 1979-80 (the fifth year of operation) is not yet complete, but the high level of settlement seems to be continuing. One hundred and sixty-two (162) sets of negotiations occurred in 1979-80. One hundred and fifty-one (151) have reached settlement; in the other cases the parties are still in the process of concluding an agreement. Seven strikes had occurred to date May 14, 1980, in attempts to conclude agreements for 1979-80.

Accurate statistics on the duration of strikes prior to Bill 100 are not available, but a detailed statistical treatment of strikes and lock-outs after Bill 100 is contained in Appendix V. It should be noted that 19 of the 25 strikes since the passage of Bill 100 have been conducted by secondary school teachers, and the average duration of these strikes is considerably more than that of

strikes by elementary teachers in public and Roman Catholic separate schools. The average length of a sanction involving secondary school teachers is 39 instructional days (25 days if work-to-rule sanctions are omitted), compared to an average length of 18 instructional days involving elementary teachers in public and Roman Catholic separate schools, none of whom has engaged in work to rule.

The Commission is concerned about the detrimental impact of strikes, particularly long strikes, on the students. It is also clear to the Commission that the general public is becoming increasingly concerned about this matter. If the federations and boards do not find a way to reduce the impact of strikes on students, the public may soon demand drastic (and perhaps unwise) government action.

G. DISCUSSION OF ISSUES AND RECOMMENDATIONS

1. Bill 100 and the Principles of Collective Bargaining

Recommendation #1

The Commission recommends that teachers and boards should continue to negotiate under an amended version of Bill 100.

Bill 100 embodies one form of collective bargaining which has been specifically designed for teachers and school boards in Ontario.

In general, collective bargaining may be defined as any process by which organized groups of workers and those desiring their services seek to resolve their differences over wages and other conditions of employment through negotiation, under pressure of the threat of sanctions by either party, or the threat of the imposition of some mechanism for resolving conflict.

So defined, collective bargaining can take many forms. At one extreme, it can be free and unfettered. At the other extreme, it can be regulated to the point of being stifled. Some would argue that the latter is precisely the result when the right to strike and lock out is replaced by compulsory arbitration.

Between these two extremes lies most of the collective bargaining which takes place in Canada under labour relations acts. Thus, in Ontario, the main legislation governing employee-employer relations on a collective basis is The Ontario Labour Relations Act. This Act provides, among other things, for the certification of unions, the accreditation of employers' associations, the reciprocal rights and responsibilities of the parties and the conciliation of labour disputes.

In turn, lying between The Ontario Labour Relations Act and the extreme of fully regulated collective bargaining, are the several acts applying to particular groups of public and quasi-public workers. These Acts, separate and distinct from The Ontario Labour Relations Act, are usually justified on grounds of the public interest, usually related to the potential harm done to third parties during a strike or lock-out. Bill 100 is an example of this type of Act. It covers only one group of employees, i.e., elementary and secondary school teachers, in their relations with their school boards.

Bill 100 differs from The Ontario Labour Relations Act in a number of ways. It grants to the teachers' federations' local affiliates exclusive or monopoly bargaining rights without any certification process. Moreover, there is no procedure by which they can be decertified (as other unions can be under The Ontario Labour Relations Act).

Bill 100 also grants the teachers' federations a collective form of the closed shop, since all teachers must belong to one of the federations. With this feature goes automatic dues deduction. No union is granted the first privilege under The Ontario Labour Relations Act, and all unions operating under that Act have only recently been accorded the latter privilege.

On the other side of the ledger, Bill 100 provides a more regulated route to the ultimate resort to strike or to lock out. Aside from conciliation or mediation, neither of which is required, fact finding must occur before either party can take any direct action against the other. Moreover, there must be a supervised strike vote before a strike can occur.

Monitoring these and other special features of Bill 100 is the ERC, whose role is different than that of the Ontario Labour Relations Board (OLRB) established under The Ontario Labour Relations Act. The ERC plays a less judicial role than the OLRB. Rather it closely follows all negotiations under Bill 100, and is authorized to intervene whenever it feels that it can be of assistance to the parties.

The basic reason for Bill 100 appears to have been a belief that elementary and secondary education are so important and present such special problems that special attention for labour relations purposes is required. Presumably, this is because the education of innocent third parties, i.e., students, is involved. But this cannot be the sole reason since other workers involved in the provision of this education, e.g., custodial and secretarial personnel, are covered by The Ontario Labour Relations Act.

Another major consideration behind Bill 100 was clearly the fact that the teachers' federations and the school boards wanted a special statute of their own. This desire remains today. Every major teacher and trustee group which appeared before us testified that they wanted to retain special legislation to govern their negotiations. Teachers and trustees have competing and conflicting views on how Bill 100 should be modified, but they are united in their basic commitment to the principle of a special act to govern their relations.

The Commission has decided to proceed on the basis of this joint commitment and to endorse the continuation of Bill 100 even though one of its members (John Crispo) has some serious misgivings and reservations about this approach. He is concerned that the proliferation of different labour-relations statutes governing various groups of employees and employers in this province is leading to undesirable fragmentation in the overall approach to industrial relations. In his view, it would be sounder to cover all groups of employees and employers under one comprehensive labour relations act, with appropriate deviations where necessary. There is already a precedent for this under The Ontario Labour Relations Act, which includes special provisions for the construction industry, together with a special panel of the board to deal with this industry.

In spite of some reservations the Commission believes that the wishes of those most directly involved, i.e., the teachers and trustees, must be respected.

2. Sanctions

a. The right to strike

Recommendation #2

The Commission recommends that the right to strike continue to be provided in an amended Bill 100.

Under Bill 100, as under most labour laws, a strike is defined as any collective pressure brought to bear on an employer by a group of workers through the partial or full withdrawal of their services. Because the teachers' right to strike is the most controversial and fundamental provision in Bill 100, we have chosen to deal with it first.

The Commission recognizes that the right to lock out is one of the employer's quid pro quos for the employees' right to strike. Therefore much of what we say with respect to the right to strike also applies to the right to lock out.

Traditionally it has been argued that the right to strike is essential to the collective-bargaining process. The strike and the threat of strike have been viewed as catalysts which drive both sides to compromise their differences and arrive at an accommodation. In the absence of such a catalyst doubts persist that there will be the necessary inducement for the parties to arrive at a compromise.

The only real substitute for the right to strike is compulsory arbitration which presents several potential problems among which are the following:

(a) it is not easy to find arbitrators who continue to remain acceptable to parties in dispute unless the arbitrators make unwarranted compromises along the way. While successful arbitrators deny that they ever base their decisions on anything but the merits of the case, the proponents of the right to strike claim that arbitrators are tempted to keep an eye on their "batting average".

their continued employment as arbitrators depends upon their maintaining their credibility with both sides; hence their awards are sometimes seen to represent unwarranted compromises;

(b) since arbitrators are free to render an award at any point between the final positions of the parties, arbitration can have a corrosive, or chilling, effect on the collective-bargaining process. If both parties expect that an arbitrator is going to split the difference between them in some way or another, they have little or no incentive to compromise. After all, every time they move in negotiation, the arbitrator may move them further by interpreting their last position as a floor or ceiling in determining the award. This is hardly conducive to meaningful collective bargaining;

(c) compulsory arbitration can detract from responsible internal decision-making within federations and/or school boards. To illustrate: the young teachers may want better job security, the older teachers improved pensions, and those in the middle with growing families may wish to have an expanded benefit program. A responsible federation negotiator has to trade off various claims in the course of arriving at an agreement with a board. It is not an enviable or popular task, but it is one that must be undertaken. If an arbitrator is eventually to decide it all, the negotiator can avoid trouble with the different factions in the federation(s) by simply putting forward all of their demands, letting the arbitrator be blamed for the unpopular trade-offs that are inherent in the process. Compulsory arbitration may lend itself to such irresponsible federation leadership.

Similarly, school trustrees who want to avoid much of the responsibility for an increase in education costs and mill rates can easily "pass the buck" to the arbitrator. By taking an unrealistically low position in bargaining, they can force the dispute to arbitration and then blame the arbitrator for the result. Thus, compulsory arbitration can also contribute to irresponsible trustee leadership;

(d) arbitrators do not have available definitive criteria for adjudicating interest* disputes. As a result, arbitration awards often give the appearance of blunt instruments having been used to decide complex labour relations problems. This can lead the parties to question whether their interests have really been properly taken into account; and

(e) even when the arbitration awards appear equitable, they are hardly substitutes for accommodation or agreement. At least in the latter case, the parties eventually arrive at a mutually acceptable compromise. Even if either or both parties feel that they failed to achieve an important objective in a particular round of negotiations, they have the satisfaction of knowing that they have agreed on what they would lose.

Furthermore, the Commission believes that strikes should not always be viewed as having a negative impact on a school system. In some instances the only effective way that teachers have of communicating serious problems to the board is through strike action. By "clearing the air" in this fashion, the parties may be more willing to address important issues that need to be resolved.

This cathartic effect should not be minimized. We have heard from some parties that a strike was the best thing that had ever happened to them. Without experiencing the consequences of a strike, they might never have come to grips with the problems that were impairing their relationship. This cathartic effect is less likely to occur when compulsory arbitration is imposed.

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*Interest disputes are disputes involving the content of a collective agreement as distinct from a rights dispute involving the interpretation of a clause or clauses in a collective agreement, e.g., a grievance dispute.

Finally, the Commission is aware that legislation cannot prevent strikes from occurring. Sometimes teachers, like other workers, become so frustrated with their work, and their employer's failure to sympathize with their problems, that they require a collective release for their built-up tensions. Without the legal right to strike, they can be driven to strike illegally. The demoralization of a work force when it feels aggrieved, and yet is denied the right to strike, is an especially important problem in the education sector where attitudes are so fundamental for success.

Standing compulsory arbitration systems seldom, if ever, work as well as they are intended. Even when workers do not have a psychological need to strike as a kind of cathartic release or safety valve they may strike in defiance of an arbitration award which does not satisfy them. The Australian system of compulsory arbitration has not eliminated a wide variety of demonstrations, protests and political strikes. In the United States, there are many examples of federal, state and municipal worker strikes in defiance of laws forbidding them. Even in small "c" conservative Ontario, public servants bound by compulsory arbitration statutes have occasionally defied them.

The federations representing the teachers unanimously and vigorously championed the right of their members to strike. In addition to some of the reasons already advanced, they argued that in a free society the ultimate right of any group of workers who object to their terms and conditions of employment is the right to withdraw its labour. Although we suspect that many teachers, despite their federation's militant position, still feel ambivalent about the right to strike, they seem to respect their federation's judgment that they must, in the final analysis, have that option open to them.

It was also the virtually unanimous view of the trustee groups which appeared before us that teachers should continue to have the right to strike. The basic reason given by the trustees for their defense of the teachers' right to strike was their fear of the alternative, which is invariably some form of compulsory third-party arbitration.

Trustees resent and resist the idea of a third party decreeing what they should pay their teachers. It removes from their control the largest component of their budgets thereby jeopardizing the autonomy and independence they continue to guard so jealously. Even worse, the arbitrator is not accountable to the local electorate for the consequences of the award.

There is another school of thought in Ontario that favours the substitution of interest arbitration for the right to strike for public service employees. This view goes back at least as far as Mr. Justice Rand's Report of the Royal Commission Inquiry into Labour Disputes (1968) and Judge Walter Little's Collective Bargaining in the Ontario Government Service (1969), both of which challenged the wisdom of granting the right to strike to public service employees.

In education the Reville Report (discussed earlier) made similar recommendations in 1973. And in 1976, the Committee on the Costs of Education suggested the removal of the right to strike, limiting the scope of bargaining, and establishing a system of salary determination based upon a method of fair comparison with "good" employers.[7]

The concerns about public-sector strikes are not difficult to understand because they can bring inconvenience and hardship to large numbers of people not directly involved. Hence there is a political dimension as well as an economic one.

Strikes in the school system cause hardship and inconvenience, and affect the education of children. It is not surprising, then, that the public, particularly those with children of school age, become intolerant of strikes.

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[7]Compensation in Elementary and Secondary Education, Interim Report Number Six (Toronto: Ontario Ministry of Education, October, 1976).

Opposition to strikes in the schools was expressed by the majority of parent groups which appeared before the Commission. As well, the Ontario Home and School Association reported that more than 75 percent of the respondents to its survey on the teacher's right to strike opposed it. Furthermore, we believe that the silent majority of citizens and taxpayers who did not appear before the Commission are at least skeptical about teachers continuing to have the right to strike.

Opposition to strikes was particularly strong in areas which were experiencing sanctions at the time the Commission was holding public hearings. For example, in Sudbury[8] we received several briefs requesting the removal of the right to strike, from concerned parents, irate taxpayers and a representative of the clergy. We received a copy of a petition with 3000 signatures which was sent by Sudbury parents to the Education Relations Commission requesting an end to the strike.

Organizations and individuals in areas that have experienced repeated strikes in recent years also submitted briefs requesting the removal of the right to strike, e.g., North York Education and Community Council (EDUCOM), and the Citizens for Educational Rights of Children in Peel. The latter not only sent in a brief, but also a 1200-signature petition from parents. Other organizations such as the Federation of Catholic Parent-Teacher Associations of Ontario, People and Organizations in North Toronto, the Board of Trade for Metropolitan Toronto and the Sarnia Chamber of Commerce also recommended against the right of teachers to strike. However, the Carleton Home and School Council, Organized Working Women, and to some extent the Ontario Secondary School Students' Association came out in favour of retaining the right to strike.

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[8]The teachers' strike in Sudbury began on February 6, 1980, and ended on May 4, 1980, when the teachers and board ratified a negotiated two-year agreement.

The main arguments of those groups opposing the right to strike are that education is an essential service; that The Education Act, 1974 requires parents to send their children to school without interruption until the age of 16; and that the minimum requirement of 185 instructional days is not achieved when there is a protracted strike.

The parents and students who submitted briefs to the Commission were genuinely concerned about the possibility of their children's or their own education suffering from the effects of a strike, and they pointed to the study conducted by the Ontario Institute for Studies in Education as a source of support for their fears.[9]

They also emphasized the important custodial functions performed by the schools. With changing lifestyles, there are many single working parents, and households in which both parents work outside the home. In these cases, parents depend on the schools to take care of their children while they are at work. The Commission was told that when a strike interferes with these custodial functions, the students are turned out into the street and vandalism, drug use and petty crimes occur with greater frequency.

Finally, the Commission is aware that some people view the case against compulsory arbitration as more rhetoric than substance; that the negative effects of arbitration on collective bargaining are at least debatable; and that new forms of arbitration, such as final-offer selection or a combination of mediation and arbitration, could conceivably reduce the imperfections of conventional interest arbitration.

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[9]David W. Brison and Anthony H. Smith, The Effects of Ontario Teachers' Strikes on Students: Summary and Integration of Three Component Studies (Toronto: Ontario Institute for Studies in Education, 1978).

Bill 100 recognizes that all parties - the teachers, trustees, students, parents and rate-paying public - have legitimate interests that must be protected. It acknowledges that from time to time these interests may come into conflict, and that the only equitable way to resolve these conflicting interests is to find some form of accommodation that balances the interests of all parties involved. We subscribe to this philosophy, and we believe the record of negotiations to date indicates that this has generally proven to be a workable compromise not always easily achieved.

The Education Relations Commission is responsible for protecting the public interest while at the same time preserving the integrity of the collective-bargaining process. A great deal of sensitivity is required to carry out this role. Nowhere is this more evident than in its obligation to advise the government when a strike or lock-out places the students in jeopardy of losing their courses of study. A passage from the ERC's First Annual Report to the Legislature describes this situation well:

> In exercising this duty, the Commission faces two potentially conflicting policies in the Act. On the one hand, the Act envisages free collective bargaining with the possibility of resorting to strike or lock-out. On the other hand, when the harm becomes too great or the risks conclusive, the statute contemplates that the right of the parties to impose sanctions may be subordinated to the right of the students to resume their education. To strike a balance between these policies is the difficult task facing the Commission. If it acquiesces for too long, it will have failed in its duty to the students. But if it prematurely precipitates legislative intervention, it will undermine the bargaining process.
>
> An essential part of collective bargaining is that, when there is a resort to sanctions, both parties are adversely affected. To the teachers, this can mean loss of income to them personally and to their affiliates. On the employers' side, there may be economic gain for the board from the saving of teachers' salaries during the conflict, but there can be political consequences if the community comes to believe that the board is unnecessarily prolonging the strike or lock-out.

> It is essential to the long-run health of the bargaining process that neither side be able to escape adverse consequences, so that each will have an incentive to seek a settlement. It is equally essential that each side accept responsibility for settlement, or for the consequences of disagreement, including prejudice to the students.[10]

After careful weighing of the concerns and issues involved, the Commission recommends that the right to strike should continue to be provided in Bill 100.

b. The right to lock out

Recommendation #3

> The Commission recommends that Bill 100 be amended to provide that boards have the right to impose full or partial lock-outs at the same time, and under the same conditions, as teachers have the right to strike.

We deal with the right to lock out fairly briefly in the light of what we have already said about the right to strike. If teachers are to continue to have the right to strike - as we believe they should - then school boards must have the right to lock out. In industrial relations in general, one of the employer's quid pro quos for the employees' right to strike is the right to lock out. This is part of the balance of power our industrial relations laws are designed to achieve between labour and management.

Currently under Bill 100, school boards have the right to lock out but only after the teachers have partially or fully withdrawn their services. Thus the right to take any initiative in the event of an impasse lies entirely with the teachers. There is no precedent for this in other labour relations statutes, and we do not see any reason why it should remain in this one. It may be that school boards would not exercise the right to lock out until the teachers took strike action, but they should have the same right of direct action as the teachers. Consequently, we believe that, as soon as teachers are in a position to strike under the law, trustees should be in a position to lock out.

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[10] p. 9.

Since teachers have the right to engage in partial strikes, we recommend that school boards also be given the parallel right to apply selective or partial lock-outs, i.e., the right to lock out in some, but not necessarily all, of its schools.

c. Working to rule

Recommendation #4

The Commission recommends that partial withdrawal of services continue to be permitted as a strike under Bill 100.

Working to rule was a strategy originally developed by workers who were expected to work by an elaborate set of rules prescribed by their employers. In some industries, such as the railways, these rules were at one time spelled out in so complex and complicated a manner that the operation could be slowed down considerably by following them to the letter. By so doing, the workers involved could bring immense pressure to bear on their employers without engaging in an all-out strike and forfeiting their wages.

Teachers have appropriated the term "work to rule" to describe an altogether different tactic. They have employed two levels of work to rule. A "soft" work to rule involves the withdrawal of voluntary services, such as the coaching of teams or the supervision of dances. "Hard" work to rule involves much more. In the extreme, it involves a refusal to prepare lessons, mark papers or counsel students individually - duties that seem to be required by The Education Act, 1974 and its Regulations.

The fact is that neither a soft nor a hard work to rule in education is really a work to rule in the traditional sense. If anything, especially in the case of a so-called hard work to rule, it is just the reverse. It is really a partial withdrawal of services, many of which are not specified anywhere as part of a teacher's formal duties.

From the teachers' point of view, there is a great deal of attraction to this type of partial withdrawal of services. So far at least, when they have employed this tactic, they have continued to collect their full pay while doing considerably less work. Only a few boards have chosen to lock out their teachers, or to reduce their pay when confronted by a refusal on their part to perform some of their normal duties.

Aside from teachers who resort to this tactic, all of those who have been exposed to it are harsh in their criticisms. The students who appeared before us claimed that these partial strikes do much more harm than a full-scale strike, because of the day-to-day ill-will that develops between students and their teachers when the latter refuse to relate to them on a normal basis. Their relations tend to become more formal, legalistic and ritualistic, and apparently lead to a great deal of strain and tension.

Even those students who favoured the retention of the right of teachers to strike felt that they should only be allowed a total strike. They believe that the effect of partial strikes is so poisonous that they should be banned altogether. This view was shared by many trustee groups, who also are convinced that partial strikes do more harm to the long-term success of their schools than do total strikes.

We also heard from some teachers who are opposed to partial strikes but not to total strikes. Representatives of both music and physical health teachers complained that the burden of a partial strike falls much more on them than on their colleagues, because they tend to be involved in more extracurricular activities. One might also surmise that the burden of a partial strike falls much more heavily on the more conscientious and dedicated teachers who regularly "walk the extra mile" for their students.

Some of the parent groups expressed a preference for partial as opposed to total strikes, presumably because the schools at least remain open during a partial strike. While the overall educational process may suffer, work in the core academic areas can

presumably continue, and some students may well proceed at much the same pace as they would have in the absence of a strike. Furthermore, the custodial function remains intact.

We are so persuaded by the adverse testimony of those who have experienced partial strikes that we would like to recommend that they be banned. The problem is that we do not know how to do so effectively in law, because attitudes are so important in teaching, and particularly in the ancillary activities that go with it. By law, one could, for example, forbid teachers from denying students normal individual counselling, but the effect of such a law could be easily thwarted by the manner in which the counselling was provided.

Instead of trying to ban partial strikes by law we think it wiser to strengthen the hands of boards in dealing with them. Even now boards can lock out their teachers when they resort to such tactics. If they really think a partial shutdown is worse than a total shutdown, they should display less reticence about locking out their teachers when they are not performing as usual.

In addition, boards should have the power to reduce the pay or otherwise change the working conditions of their teachers when they engage in partial strikes. At present, boards are free to change the terms and conditions of employment of their teachers only when 60 days have expired after a fact finder's report has been made public, and they appear not to be permitted to alter the pay of teachers in the event of a partial withdrawal of services. (See section 69.5(a) Bill 100.) In our view boards should have this right at the same time their teachers acquire the right to strike.

Our final thought on partial strikes by teachers amounts to an indictment of their purported professionalism. Teachers who engage in partial strikes are really only hurting their students. They are doing no harm to themselves, except perhaps in terms of their self-esteem, unless their school boards lock them out or reduce their pay in retaliation. Otherwise it is a kind of non-strike, or strike with pay, since they continue to be paid their normal salaries while not performing their normal duties. In most labour disputes, both sides inflict some damage on each other as well as

on innocent and not-so-innocent third parties. When teachers actually benefit by hurting their students, the Commission questions both their professional ethics, and their willingness to bear the costs which most other workers assume when they have a confrontation with their employer.

As we said earlier, we wish it were practical to ban by law partial strikes by teachers. If we thought it were practical to do so, we would not hesitate so to recommend.

d. Changing terms and conditions of employment

Recommendation #5

The Commission recommends that Bill 100 be amended to allow boards the right to change the terms and conditions of employment of teachers at the same time, and under the same conditions, that teachers acquire the right to strike.

The implementation of this recommendation would place trustees in a better position to respond to the partial withdrawal of services. In taking this position, we reject the argument of the teachers' federations that all terms and conditions of employment should be frozen until a new contract is negotiated. That position is simply too one-sided to merit serious consideration. It would allow the teachers to use any strategy they please, short of a total withdrawal of their labour, without fear of any adverse consequences.

In recommending that boards be allowed to change teachers' terms and conditions of employment when teachers acquire the right to strike, it is not our expectation that boards will always use that right in an aggressive and negative fashion. (In fact, as in the case of the right to lock out, many boards may be reluctant to take such an initiative and would use this power only in response to a partial withdrawal of services.) Rather, we expect that, in the absence of partial strikes, they will be more likely to use it positively. For example, boards might decide to implement the improved terms and conditions of employment that they have already

offered, or those that have been recommended by a mediator or fact finder. We can see no compelling reason why boards should not have the right to take such action. Indeed, we expect that boards' having this right may reduce the number and length of sanctions involving the partial withdrawal of services, and may even reduce the number of full strikes, especially in situations in which a fact finder has provided recommendations on the principal elements of the agreement under negotiation.

e. Right to operate in the face of a strike

Recommendation #6

The Commission recommends that there be no statutory obstacles to prevent a board from attempting to operate its schools when its teachers are on strike.

As indicated earlier with respect to general industry, an employer's quid pro quo for the employee's right to strike is the right to operate in the face of a strike. We can see no reason why this equation should not apply as well in elementary or secondary education.

There is no question that a strike of teachers can preclude the operation of the full educational program. At the same time, many of the extracurricular activities and many of the custodial functions referred to earlier could be offered during a full strike of teachers.

In some communities, as we noted earlier, the custodial function of the schools is an important one, given the number of single or double working parents. School boards wishing to satisfy this need should not be barred from doing so.

Reserving for the boards the right to operate the schools in the face of a strike might seem to weigh too heavily in favour of the boards, since it would lessen the pressure on them to settle. It might also benefit the teachers, however, since it would reduce the pressure on the provincial government to terminate a strike prematurely. In any event, we can see no reason why any legal obstacles should be placed in the way of a school board attempting to operate its schools in the face of a strike.

f. Last-demand and last-offer votes

Recommendation #7

The Commission recommends that Bill 100 be amended to provide that under the supervision of the Education Relations Commission a vote by a board in open session on the teachers' "last demand"* must be held before a vote to lock out or change terms and conditions of employment may be taken and that the vote to lock out or change terms and conditions of employment must be taken within five days of the "last-demand" vote, otherwise a "new" last-demand vote must be held.

Recommendation #8

The Commission recommends that Bill 100 be amended to provide that the strike vote must be held within five days of the last-offer vote by the branch affiliate, otherwise a "new" last-offer vote must be held.

A last-demand or a last-offer vote should be taken before either a school board or a federation respectively is allowed to invoke any sanction against the other. The last demand of the branch affiliate involved should be placed before the school board for a vote. Similarly, the last offer of the school board should be placed before the branch affiliate for a secret-ballot vote. Both votes should be supervised by the Education Relations Commission.

Bill 100, as presently written, is one-sided in this regard. Only last-offer votes are required of the teachers before they take any sanctions. We believe there is enough merit in this type of vote to insist on it for both sides of the bargaining relationship. Thus our recommendation is for both a last-demand and a last-offer vote.

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*in current Bill 100 referred to as "proposal of the branch affiliate" - section 69(2).

In order to avoid a strike or lock-out vote being taken on the basis of an obsolete "last offer" and "last demand", the Commission recommends that the strike or lock-out vote must be held within five days, otherwise a new "last offer" and "last demand" must be requested.

g. Termination of a strike or lock-out

Recommendation #9

The Commission recommends that Bill 100 be amended to provide that the Education Relations Commission shall advise the Lieutenant Governor in Council when it judges that an unresolvable impasse has been reached and/or the continuance of a strike or lock-out will place in jeopardy the successful completion of courses of study by the students.

It is, of course, unrealistic to expect that in every instance of strike or lock-out a settlement mutually agreed upon by both parties will be found, although such a result would be highly desirable and is, in fact, achievable in the majority of instances.

Under Bill 100, the ERC currently has the responsibility to advise the Lieutenant Governor in Council if it believes that a strike or lock-out or closing of school(s) has extended to the point that the "successful completion of courses of study by the students" is in jeopardy. However, the Commission believes that a judgment could also be made on whether the negotiations have reached an "unresolvable impasse", i.e., a judgment that the positions of the two parties are so firmly fixed that no voluntary accommodation is likely within a reasonable time.

Recommendation #10

The Commission recommends that Bill 100 be amended to provide that in the event that a strike or lock-out is to be terminated, the Education Relations Commission shall have the power to recommend to the Lieutenant Governor in Council the length of the agreement to be established, as well as the method to be used to settle the dispute, for example: final-offer selection, or arbitration, or any other procedure.

Such powers invested in the ERC would introduce considerable uncertainty in the minds of the parties. And these powers could be used to persuade the parties to avoid "tough" back-to-work legislation by seeking their own agreement.

The other procedures referred to may include, but not be limited to, such actions as: replacing the negotiating teams on either side; placing a school board in trusteeship if its actions appear to be irresponsible or imposing a 30-day cooling-off period.

Clearly, these are drastic measures, and we have no doubt the ERC would explore every possible method of assisting the parties to reach settlement prior to making such recommendations to the Lieutenant Governor in Council. These options would, however, present a stern warning to the negotiating parties that the public will not countenance negligent and irresponsible behaviour at the bargaining table.

h. Alternative actions and strategies

Recommendation #11

The Commission recommends that Bill 100 be amended to provide the Education Relations Commission with the authority to use a variety of strategies in assisting the parties to reach an agreement and/or to improve their relationship.

It became apparent to the Commission during the public hearings that some parties' relationships have seriously deteriorated, and that personal animosities have developed to the point where confrontation in the immediate future seems likely. We believe that ERC may be of assistance in improving the communications between the parties, and in assisting them to develop more positive interpersonal attitudes.

The ERC has begun to experiment with various preventive mediation strategies and has consulted with some Ministries and Agencies to develop new programs. We strongly suggest that the ERC continue its efforts in this area, and we urge the parties to take advantage of the ERC expertise.

i. Assistance to students during a strike or lock-out

Throughout its work, the Commission has been continuously aware of the need to protect, insofar as possible, the interests of the students. At the same time, we are aware that the changes that we recommend in this report will not prevent work stoppages in the future.

We therefore issue a call to teachers and boards to make every effort before and/or during a strike to reduce the impact of the lack of regular classes on the academic progress of the students. For example, the provision of class outlines, reading lists and other study guides to students by the teachers before going on strike would be of considerable assistance to the students. No doubt other steps could also be taken by teachers and trustees to assist the students in continuing to study and learn, even during a time when the regular teaching program is suspended. We believe that teachers and trustees have an obligation to do so.

j. A caveat and a warning

We have taken our position in respect to sanctions not only because virtually all the teacher and trustee groups favoured it, but also because we are concerned about the arbitrary nature of any alternatives to the use of sanctions.

We are also aware that events could overtake us. If there are many more protracted Sudbury-type stoppages in the Province, public opinion may become very hostile. This could pressure the government into removing the right of sanctions.

To avoid this undesirable outcome we urge the teachers and trustees to explore every conceivable alternative for resolving their disputes without protracted work stoppages. If they could jointly agree on such a study, the government should consider underwriting the cost of an investigation to determine what might be done to make voluntary arbitration or voluntary final-offer selection more acceptable to both sides.

3. Bargaining Unit Problems

Numerous bargaining unit problems were drawn to our attention during the course of our deliberations. Many of these problems arise because Bill 100 does not provide the usual certification procedures provided in other labour relations acts.

In fact, as we indicated previously, there is no provision for certification procedures in Bill 100. Instead, local branch affiliates of teachers' federations are granted exclusive bargaining rights by statute for all teachers designated as such in Bill 100. Experience to date would in the main seem to bear out the appropriateness of this arrangement.

Under The Ontario Labour Relations Act, the Ontario Labour Relations Board is charged with determining the appropriateness of the bargaining unit proposed by a union. Having so determined, the Board must then ascertain whether the union enjoys majority support among the workers deemed to fall within the bargaining unit. The union may lose its exclusive bargaining rights on certain grounds, but otherwise the bargaining unit stands unless the union (or unions) and the employer (or employers) involved agree to change it.

A number of issues pertaining to the composition of the bargaining unit, and to joint bargaining by several units and one or more boards, have arisen or may arise in the future. In this section, we make recommendations on several specific issues, and then recommend a mechanism for resolving these and other similar issues that may arise in the future.

a. Composition of the bargaining units.

Several issues have arisen in respect to the membership of several different groups of teachers in the bargaining units.

i. principals and vice-principals

Recommendation #12

The Commission recommends that the requirement in Bill 100 that principals and vice-principals be members of the bargaining units be retained.

Recommendation #13

The Commission recommends that Bill 100 be amended to provide that principals only be denied the right to strike.

Recommendation #14

The Commission recommends that The Education Act, 1974, and its Regulations be amended to define more precisely the duties of a principal, and especially those duties during a strike.

Recommendation #15

The Commission recommends that the Minister maintain a watching brief to ensure that principals are allowed to perform their duties without undue interference from the teachers' federations.

The issue of whether principals and vice-principals should be full members of the teachers' federations, i.e., within the local bargaining unit, for collective-bargaining purposes, remains highly controversial. Clearly, it was a contentious issue when Bill 100 was drafted five years ago; hence the compromise, which provides that principals and vice-principals are members of the federations for bargaining purposes, but are denied the right to strike.

All of the federations insisted that principals and vice-principals should be full members of the federations, with all of the rights and privileges of such membership, including the right to strike. Most of the trustees took the diametrically opposite view, insisting that principals and vice-principals are primarily managers and, as such should not be members of the teacher federations, or at most, should be members of a separate federation that would not include regular teachers. This general trustee view was not shared by the Ontario Separate School Trustees' Association,

however, which recommended that the issue be studied further. On the other hand, the Ontario Catholic Supervisory Officers' Association supported the view that principals and vice-principals should not be members of the bargaining unit. Furthermore, some individual boards of education and some separate school boards communicated to us their disagreement with their respective provincial associations on this issue.

The difficulty is that there are compelling arguments on both sides of the question. Principals and vice-principals have been members of the federations since they were first formed. Indeed, they have played a role within the federations which was disproportional to their numbers, because of their status in the schools. (It is our understanding that in more recent years, at least in the OSSTF, principals and vice-principals have played a much diminished role, both on the central executive of OSSTF, and on its local bargaining committees.)

The federations argue that principals and vice-principals should remain in the bargaining unit because,

- they are first and foremost teachers who act as the instructional leaders in a collegial mode with other teachers in the school;
- they should be (and should be seen to be) first among equals, members of a professional team of teachers working as an entity toward effective education in the school; and
- they can work most effectively only through a decision-making process involving all of the teachers in the school.

The Commission was told by the federations, and particularly by OSSTF, that if principals and vice-principals were not in the federation,

- the collegial relationship between the principal and teachers would inevitably be replaced by a more formal and legalistic, even antagonistic relationship. Certainly, a brief perusal of collective agreements in Quebec and New York (two North American jurisdictions where principals are not in the teacher bargaining unit) tends to confirm that contention;

- the principals and vice-principals would not be allowed to teach. It is estimated that 1500 full-time teachers would be required to perform the teachers' duties now performed by the 6549 principals and vice-principals (4297 principals and 2252 vice-principals);
- complaints would tend to escalate more readily from staff meeting to grievance arbitration; and
- principals and vice-principals may find themselves excluded from the staff-room meeting, and thereby less able to share their experience with, and influence the decisions of, the teachers.

Finally, the federations argued that to make the principals and vice-principals members of the federations and then by legislation remove their right to strike, places the principals and vice-principals in a difficult personal conflict and may lead to difficulties between them and the teachers.

Despite all of these dire warnings (even threats) by the federations, most of the trustees remained firm in their conviction that principals and vice-principals should not be members of the federations. Obviously, they too feel strongly about the issues involved. Basically, their position is that a principal must be essentially a manager. They do not believe that this is inconsistent with being a teacher and colleague, and point to the role played by directors of education and their supervisory staff, and to the staff of the regional offices of the Ministry of Education.

Moreover, it is argued that the principal is:

- the chief executive officer of the school;
- the person to whom all other employees in the school are accountable;
- the representative of the board who must implement the policies and procedures of the board in the school;
- the person with whom the board may wish to consult in regard to any proposed changes in program or policies;

- the person responsible to the Minister of Education for ensuring the observance of Ministry Acts, regulations and directives; and
- the person who often is the prime link between the school and the community.

The trustee groups are therefore concerned about the extent to which the principals are subject to a conflict of interest. The principals are expected by the boards to be managers, while at the same time they are expected by the federations to be loyal members of the federation in its pursuit of union-like objectives. The trustees believe that the principals are subjected to this impossible dilemma at all times.

The Commission was told by some trustees that principals were placed in an especially difficult position during a full or partial strike. When strikes occur, the present compromise provision in Bill 100 requires that principals and vice-principals stay on the job. In this situation, they find themselves burdened with instructions from the federations which are in conflict with directives from the board in regard to duties to be performed. At the very least, the federations expect the principals to donate part, if not all, of their pay during a full strike to their federation's strike fund.

Even in "ordinary" times, trustees reported difficulties in managing the schools because principals are members of the federation. Incidents were reported of principals refusing to testify in grievance procedures against individual teachers, even though the principal had initiated the action that prompted the grievance, and of their refusing to consult with the board on policy matters that might be related to the federation's bargaining position.

Indeed, the trustees argue that, as the schools have become larger and as the teacher-trustee relations have become more strained, the position of the principal has become even more untenable. They point to the increased complexity of the collective agreement, regardless of whether principals are in or out of the bargaining unit.

The Commission is not entirely certain of the view of the principals themselves on the question of their membership in the bargaining unit. According to the teacher federations, the principals want to continue to be full members of the federations. The only dissenting view we heard was from the Ontario Principals' Association, an affiliate of the Ontario Education Association. OPA's eleven-person executive, on its own behalf, presented a brief asking that a study be conducted of the merits of the principals' being allowed to form a separate federation within the Ontario Teachers' Federation.

It is clear to the Commission that principals do have significant management functions. The nature of these management functions of the principal are set out in The Education Act, 1974, and its Regulations and are included in Appendix VI. During the past thirty years, with burgeoning school enrolment and school amalgamation, many schools became so large that carrying out the management function all but precluded any teaching by the principal, particularly in the secondary schools and in many of the larger elementary schools. Nevertheless, there still remain a significant number of smaller schools, especially at the elementary level, whose principals continue some classroom duties.

The Commission believes that it is possible that the position of principal would be judged under The Labour Relations Act to be a "management" position and therefore would be excluded from the bargaining unit. However, Bill 100 was enacted in 1975 specifically because it was thought that The Labour Relations Act was not suitable for the public education sector.

On balance, the Commission recommends that principals and vice-principals continue to be members of the branch affiliate as provided in Bill 100.

There remains the question of whether principals (and vice-principals) as members of the bargaining unit should have the right to strike. No doubt one of the reasons that section 65(2) was included in Bill 100 is the belief that in a strike situation, the board should have the opportunity to operate the school. If the principal and vice-principal were on strike, that would be quite

difficult, if not impossible. Experience to date has shown that the schools cannot be operated effectively for educational purposes during a strike. Some have provided useful custodial services and limited, often special, educational services. In the organization of these two distinct services, the principals clearly have a role to play. It is in providing a link between the school and the community during a full strike, however, that the continued functioning of the principal is thought to be essential. Moreover, during a partial withdrawal of services, the continued full functioning of the principal is, of course, paramount.

The Commission therefore recommends that the Act be amended to provide that in the event of a full or partial withdrawal of services by members of the branch affiliate, or a lock-out, the principal, but not the vice-principal, shall remain on duty as currently prescribed by Bill 100.

In recommending the continuance of the current compromise on principals, the Commission realizes that the dilemma of the principals described earlier cannot be readily resolved. Countervailing forces will continue on a principal, from the federation on one hand and from the board on the other. However, in an attempt to moderate this dilemma, the Commission recommends that a more precise definition of the duties of the principal be included in The Education Act, 1974, and its Regulations. We also suggest that the boards support their principals by insisting that those Regulations in regard to the duties of a principal be followed. We further issue a strong warning to the federations that they scrupulously refrain from any action that may deter principals from performing their duties as principals to the full extent of their abilities. Lastly, the Commission recommends that the Minister should ensure that the federations do not seriously compromise the managerial component of the principal's function. If that should happen, action should then be taken to remove the principals from the bargaining units by legislative amendment of Bill 100.

ii. occasional, night school and summer school teachers

Recommendation #16

The Commission recommends that Bill 100 be amended to provide for the inclusion in the bargaining units of occasional (referred to later as "limited term" and "supply"), night school and summer school credit course teachers.

All of the teachers' federations recommended very strongly that occasional teachers be brought within their jurisdictions for collective-bargaining purposes. Occasional teachers may be described as those who fill in for regular teachers for a minimum of twenty days in a school year.

Since occasional teachers are certified and perform the same functions as those they are replacing, it is not surprising that the teachers' federations should want them included in their bargaining units. Trustee groups did not favour such a change under the law, although a few school boards have already allowed the federation affiliates to bargain for occasional teachers. The trustees were not vociferous in their opposition on this point, but were clearly inclined to favour the status quo.

The only group representing occasional teachers per se, from which we heard, did not ask to be included within federation affiliates for bargaining purposes. Rather, it called for a legislated formula which would guarantee them a rate per day proportionate to that of the lowest paid teachers in the school system in question. This request, if granted, would give occasional teachers all of the benefits of the salaries negotiated by the federations, with virtually none of the costs.

The issue of the occasional teacher is complicated by the obvious designs that some, if not all, of the federations have upon their work. The OSSTF was especially frank in this regard. It made it clear that as declining enrolment and redundancy occur in the secondary schools, it wants to protect, at least partially, the livelihood of its regular teachers by giving them the first call on occasional work. Formally and informally, this is already happening

in a number of school systems. To include occasional teachers in the bargaining unit, therefore, is to bring a group of workers under a union which eventually intends to displace them. The duty of fair representation recommended later in this report might help to protect them, but that is not at all certain.

Despite some concerns in the latter regard, the Commission believes that the federations have a legitimate claim to represent occasional teachers, and therefore recommends that they be included in the bargaining unit.

The teachers' federations also claim the right to represent night school and summer school credit course teachers. Again, the required credentials and work involved are essentially the same. Indeed, most of the teaching involved is done by teachers with a full-time regular position with the same school board, or one nearby.

The trustee groups were more vigorous in their opposition to the federations having jurisdiciton over these teachers, or at least the jobs they do, than to their having jurisdiction over the occasional teachers. To a large extent, this heightened opposition is because much lower rates are paid than would occur if the rates were proportionate to those of full-time regular teachers. The trustee groups also expressed concern about losing control over the selection of such teachers, whom they rightly claim often must have teaching abilities different from those required in a day school setting.

The Commission respects the concerns of the federations to maintain for its members teaching positions whether in day schools, night schools or in summer schools, and cannot be swayed by boards wishing to provide the same courses in night or summer courses at cheaper rates by the engagement of "moonlighters". As the Commission is advised that legislative grants for credit courses in night and summer school are the same as for day-school courses, that teacher qualifications are the same and that the courses taught are of the same content, we believe that these teachers should also be included in the federation bargaining units.

iii. teachers in junior high schools and in the schools for trainable retarded children, coordinators and consultants

Recommendation #17

The Commission recommends that teachers in junior high schools and in the schools for trainable retarded children, and coordinators and consultants, belong to the bargaining unit which is consistent with the affiliate of the federation in which they have membership and to which they pay fees.

The Commission recognizes that representation for teachers in junior high schools, and the teachers of classes for the trainable retarded, may be a problem. Junior high schools may include any combination of grades from seven to ten; hence the teachers' complement may be a blend of elementary and secondary school teachers that does not fit neatly into either the elementary and/or secondary panels for negotiation purposes. Similarily, most teachers of classes for the trainable retarded are qualified as elementary school teachers, but grants for such classes are paid at the secondary school rate. Further, teachers employed as coordinators or consultants are not usually listed on the staff complement of any school, may come from either the elementary and secondary panel, and work across the whole spectrum of elementary and secondary grades. There is no easy solution to these problems except a rather arbitrary one. Accordingly, the Commission suggests that teachers in the positions described above should belong to the same bargaining unit as is consistent with the affiliate of the federation in which they have membership and pay their fees.

3.b. Joint bargaining

Recommendation #18

The Commission recommends that Bill 100 continue to provide for voluntary joint bargaining by branch affiliates and/or by school boards, subject to adjudication by the Education Relations Commission as recommended in Recommendation #19.

i. the elementary school panel

The two main federations at the elementary public school level are the Federation of Women Teachers' Associations of Ontario (FWTAO) and the Ontario Public School Men Teachers' Federation (OPSMTF). In addition there is L'Association des Enseignants Franco-Ontariens (AEFO). The AEFO is also present in the elementary separate schools, where it shares the jurisdiction with the much larger Ontario English Catholic Teachers' Association (OECTA).

To date, the two major federations in the elementary public schools have chosen to negotiate with the school boards jointly; the AEFO, when present, accepts the result. It has been the custom for AEFO to bargain jointly with OECTA in the separate schools.

While the school boards in both the public and separate school systems appear quite satisfied with these arrangements, they have concerns about the future. They are uneasy lest they be placed in the position of having to deal with more than one federation in separate bargaining. They argue that if each branch affiliate were to bargain separately with the board, an excessive amount of time would be required, and the board might be subjected to "whip-sawing". Consequently, they are proposing that the law require joint bargaining at the elementary school level.

The teacher federations take strong exception to the school board position on this question. They point out that no major problems have arisen to date and, for this reason, question the need for compulsion in this area.

The Commission understands the federations' preference in this matter, but also recognizes the legitimate apprehension which lies behind the school boards' concerns. In general, we believe that there should only be one round of negotiations at the elementary school level, but we are dubious about enshrining this principle in law.

ii. the secondary school panel

The potential problem posed by more than one round of negotiations also exists in the secondary schools, where the predominant Ontario Secondary School Teachers' Federation (OSSTF) and AEFO now negotiate jointly. Our position on joint bargaining within the secondary schools is the same as that on joint bargaining within the elementary schools.

iii. the elementary and secondary school panels

Although there has been little, if any, joint bargaining involving both of the elementary and secondary school panels, and although teachers and trustees have not called for it, such bargaining should not be ruled out in the future. Even though different grant structures apply at the two levels of schools, those involved are still teachers within the same overall system.

There are school boards which are already thinking about the possibility of joint negotiations with their elementary and secondary teachers. We would not be at all forward-looking if we did not allow for this possibility.

iv. by school boards

During its hearings, the Commission heard of some of the difficulties that have arisen in Toronto as a result of having a Metropolitan School Board as well as six local boards. Since municipal funds for the local boards come from the Metro Board, they are all on the same tax base. The obvious question is why should not all of the local boards bargain jointly with all of the branch affiliates within each panel? The Commission found no consensus among either the boards or the federations on this question.

On the other side of the coin, however, is the argument that Metro-wide bargaining cannot allow for all of the special problems at the individual school board levels. In our view, Metro-wide negotiations are desirable, but only if provisions can be made for special problems within the scope of negotiations.

In the initial years after Bill 100 was passed, the various school boards in Metropolitan Toronto agreed to negotiate jointly under the auspices of the Metropolitan Toronto School Board. Recently that unitary stance has given way to an increasingly decentralized and fragmented pattern. The combination of teacher federation and individual school board concerns and pressures has produced a "crazy quilt" pattern of negotiations which is gradually taking over the Metropolitan Toronto School Board bargaining scene.

Although the special situation in Metropolitan Toronto has brought the matter of joint bargaining by different school boards to the fore, it may become a more general problem in the future. This could easily happen if neighbouring school boards begin to press for joint bargaining in order to avoid being "whipsawed" by the federations. It is not uncommon for the federations to build upon each settlement in turn, thereby engaging in a process commonly known as "leapfrogging" or "whipsawing".

3.c. Mechanism for modification of local bargaining unit composition and joint bargaining arrangements

Recommendation #19

> The Commission recommends that Bill 100 be amended to provide that the Education Relations Commission have the authority to adjudicate disputes pertaining to the appropriateness of bargaining units and joint bargaining.

Although we have made recommendations in regard to membership in the bargaining units (Recommendations 12, 16 and 17) and in regard to joint bargaining by affiliates and boards (Recommendation 18), we believe that changing circumstances in the future may result in changes in bargaining-unit composition, or in joint-bargaining arrangements, being necessary or desirable. Therefore,

bargaining-unit composition should not be defined in legislation without provision for modification from time to time. Similarly, joint bargaining should not be legislated as entirely voluntary, without provision for joint bargaining to be imposed if circumstances warrant such action.

In British Columbia, the Labour Relations Board has the power to vary existing bargaining-unit composition, on its own initiative, or at the request of any of the parties involved. No change can be effected until there has been a thorough public hearing of the case for and against the change.

The Commission believes that a mechanism should be provided under Bill 100 to resolve disagreements between or among affiliates or boards concerning bargaining-unit composition, and to resolve issues of joint bargaining.

Because of its intimate knowledge of the total negotiations process between teachers and school boards, the Commission believes that ERC should have the authority under Bill 100 to hold hearings as necessary on issues of bargaining-unit composition or joint bargaining, and to make rulings that are binding on all parties.

3.d. Province-wide bargaining

Recommendation #20

The Commission recommends that province-wide bargaining by teachers' federations or school boards not be allowed under an amended Bill 100.

Province-wide bargaining, which is common in several other provinces, was not advocated by any of the teacher or trustee groups which appeared before us. It was recommended by the Board of Trade of Metropolitan Toronto and one or two individuals.

The Board of Trade of Metropolitan Toronto coupled its call for province-wide bargaining with its recommended replacement of the right to strike or lock out by compulsory arbitration. In rejecting the latter proposal, the Commission acknowledges that

there may be some advantages in province-wide bargaining, especially if it is of a bi-level character allowing the most contentious issues, e.g., monetary items, to be negotiated province-wide, while other items of educational and professional concern are negotiated by local teachers and boards.

It has also been argued that a province-wide strike, though it involved all students and teachers in the province, would likely be of short duration. On the one hand, there would be province-wide pressure on the government to legislate an end to the strike. On the other, it is said that the teachers' federations would have difficulty in building a strike fund sufficiently large to finance anything more than a short province-wide strike. In turn, it is argued that a one- to two-week province-wide strike would actually do significantly less harm to students than would a strike of two to three months' duration in a particular school district.

Against these and other possible advantages flowing from province-wide bargaining are a number of potential disadvantages. Perhaps the most important of these is the likely decline in local autonomy. Teachers' salaries account for more than 76 percent of school board spending and the transfer of their determination to the provincial level would drastically reduce the role and control of local school boards. Not to be minimized either is the cost of "levelling up" teachers' salaries across the province, which would be the inevitable by-product of a move toward province-wide bargaining.

Because none of those directly involved favoured province-wide bargaining, and because province-wide bargaining could prove to be a net disadvantage over the present localized system, we do not recommend it. Indeed, because there are so many large issues involved in this question, we do not believe it is a matter which should be decided by any body other than the provincial Legislature itself. The issue of province-wide bargaining should not be within the mandate of ERC as recommended for other bargaining-unit issues (Recommendation #19).

In taking a position against province-wide bargaining at this time, we recognize at the same time that teachers and trustees could unwittingly force development in that direction. If there is an escalation of local disputes, particularly at the secondary school level to the extent that it leads to sympathy strikes or lock-outs across the province, de facto province-wide bargaining could easily result.

Teachers and trustees have the opportunity to protect the local bargaining arrangements that they both claim to want to preserve. If they fail, the Legislature may at some point feel it has no choice but to impose province-wide bargaining. Should that day come, the Commission hopes that the Legislature will opt for a form of bi-level bargaining that would leave some matters for local determination.

4. Individual Teacher's Contracts

Recommendation #21

The Commission recommends that individual teacher contracts be continued but that there be several amended forms of teacher contracts as follows:

(a) Probationary Teacher's Contract as currently provided under The Education Act, 1974, but that section 52 of Bill 100 be amended to make it clear that the terms and conditions in the Probationary Teacher's Contract may not be amended by a collective agreement;

(b) Teacher's Contract, replacing the Permanent Teacher's Contract, which will contain the commitment of the teacher to hold the qualifications and to perform the duties specified under The Education Act, 1974 (sections 2 and 3 of the current Permanent Teacher's Contract) and the beginning date of the contract. Provisions for the termination of a Teacher's Contract should be negotiated in collective agreements;

(c) Limited Term Teacher's* Contract for qualified teachers engaged for a period of one month to twelve calendar months, specifying the beginning and ending dates; and

(d) Supply Teacher's Letter of Appointment for qualified teachers engaged for a period of less than one month in any school year.

Recommendation #22

The Commission further recommends that The Education Act, 1974, and its Regulations, be amended to remove all other provisions that relate to teacher contracts, including the statutory number of professional development days, statutory sick leave allowance and the statutory provision of a Board of Reference, and that section 228 of The Education Act, 1974, which provides that either party may apply to the Minister for authority to terminate a contract, be removed.

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*currently referred to as "occasional teacher"

Recommendation #23

The Commission further recommends that The Education Act, 1974, be amended to allow a board to suspend for cause without pay for a definite period, and/or terminate any of the contracts recommended above, subject to the right of the individual involved to grieve under the appropriate collective agreement.

The individual teacher's contract came into being because of a need to regulate the employment relationships between teachers and school boards at a period more than thirty years prior to the enactment of Bill 100.

A brief but informative history of the origin of the individual teacher's contract was provided in the presentation made to the Commission by the Ontario Teachers' Federation. The details of the origin need not be discussed at length in this report. Suffice it to say that individual teacher contracts were introduced for several reasons:

- to restrict staff changes to two specific dates in order to minimize the impact on the learning process;
- to ensure that teaching positions were filled by qualified teachers;
- to maintain an adequate and competent teaching force free from political influence;
- to protect teachers from arbitrary and capricious dismissal; and
- to provide teachers with access to recourse in the event of dismissal.

Provision was also made for a Probationary Teacher's Contract.

The Board of Reference was introduced under The Teachers' Board of Reference Act (1938). This Act was amended in 1953 to become The School Boards' and Teachers' Board of Reference Act. Subsequently, the Board of Reference procedure was included in The Schools Administration Act, 1954, and later in The Education Act, 1974. A Board of Reference is applicable to either a board or a teacher, but only if the teacher is employed as a permanent teacher.

In submissions to the Commission, the federations argued that the individual teacher contract is important to the teacher because it establishes the individual's relationship with the board in regard to salary, period of employment, termination of employment, appeal in case of salary dispute and circumstances in which the teacher may be absent. The teacher contract also establishes the teacher's relationship to the Ontario Teachers' Federation and requires certain duties and responsibilities of the teachers to their pupils, education authorities, the public, the federation and their colleagues.

Some of the trustee associations, on the other hand, argued that the individual teacher contract is an anachronism and that no other group of employees in our society has individual agreements with its employers. They argued that the individual contract should be abolished, because it grants to the teacher who has been dismissed the right to apply to the Minister of Education for a Board of Reference, while agreements under Bill 100 usually include a grievance procedure for the same purpose. The trustees are concerned that an individual teacher has the option of using the Board of Reference procedures as provided under the individual contract, and the grievance procedure as provided through the collective agreement. Indeed, if unsuccessful in one, the teacher may try the other, thus involving the board, potentially at least, in an unwieldy, time-consuming and costly legal labyrinth arising out of the Board of Reference process under The Education Act, 1974, and of grievance procedures in the collective agreements.

Two of the five trustee associations, however, emphasized the need, even with a collective agreement, for the professional commitment by each teacher through an individual contract with the board. The Roman Catholic Separate School Trustees' Association was particularly strong in this view.

In addition to providing access to the Board of Reference, the individual contract also specifies within itself, or through The Education Act, 1974, such things as:

- the duties of a teacher;
- the number of professional development days;

- the number of school days per year;
- sick leave allowance; and
- permissible dates of contract termination.

The Commission is persuaded on balance that individual teachers' contracts should be continued. The personal commitment to perform the duties of a teacher as defined in The Education Act, 1974, evidenced by the signing of an individual contract, is important.

The Commission therefore recommends that the Probationary Teacher's Contract continue for the purpose for which it was intended, i.e., for a probationary period, as provided for in The Education Act, 1974, and that section 52 of Bill 100 be amended to make it clear that the terms and conditions in the Probationary Teacher's Contract cannot be changed by the collective agreement.

The concerns that led to the provision of a Permanent Teacher's Contract thirty years before the enactment of Bill 100 have been met by Bill 100. The Commission therefore recommends that the Permanent Teacher's Contract should be replaced by a Teacher's Contract that continues the commitment by the teacher to hold qualifications and to perform the duties required under The Education Act, 1974 (sections 2 and 3 of the present Permanent Teacher's Contract), includes a beginning date, and provides that the reasons for, and the dates of, termination are as required under the collective agreement.

The Commission is persuaded that the provisions for the payment of salary should be subject to agreement arrived at by collective negotiations and not by the rigid provisions now included in the Permanent Teacher's Contract, but breached by negotiated agreement.

To meet the requests for open-scope negotiations, the Commission recommends that any provisions in The Education Act, 1974, such as statutory sick leave and the number of professional development days per year, which are clearly conditions of employment, should be removed from the teacher's contract.

As grievance procedures culminating in arbitration are mandatory in every collective agreement negotiated under Bill 100, the Board of Reference procedure, necessary at one time, is no longer required. The current requirement that hearings of grievances be held in public no longer protects the parties from undesirable publicity. Clearly, one satisfactory procedure, for grieving by either party, should suffice. The Commission, therefore, recommends that The Education Act, 1974 be amended to remove the provision for a Board of Reference as well as section 228 of The Education Act, 1974 which provides that either party may apply to the Minister for authority to terminate the contract.

The Commission recommends that a Limited Term Teacher's Contract be provided for the engagement by a board of a qualified teachers for any period of time, from one month up to and including 12 calendar months, and that the beginning and ending dates be specified in the contract.

There is no provision in The Education Act, 1974 for the suspension of a teacher for cause, without pay. There is provision for termination of a contract on two occasions only, during the school year. Termination may be too severe a penalty for certain infractions; yet it is currently virtually the only disciplinary action available to a school board. The purpose of disciplinary sanctions is corrective rather than punitive.

The authority to suspend an employee without pay, subject to grievance procedure, is an essential part of virtually all other labour-management relationships. The Commission therefore recommends that a school board be given the authority to suspend for cause, without pay, a teacher engaged on any one of the recommended individual contracts. It also recommends that no teacher contracts may be terminated without just cause at times other than those specified in the Probationary Teacher's Contract, or in the collective agreement for those on Teacher's Contracts or in the Limited Term Teacher's Contract.

5. Scope of Negotiations

Recommendation #24

> The Commission recommends that Bill 100 continue to provide that negotiations shall be carried out in respect of any term or condition of employment put forward by either party.

Section 9 of Bill 100 states that "negotiations shall be carried out in respect of any term or condition of employment put forward by either party." Although this section provides virtually open-scope negotiations, there are some limitations on what can be negotiated. Section 52(1) states that "where a conflict appears between a provision of an agreement and a provision of an Act or regulation, the provision of the Act or regulation prevails." This would prevent, for example, the rights and duties of school boards set out in The Education Act, 1974 from being altered through the collective-bargaining process. Further protecting school boards from the erosion of essential management rights is section 52(2), which says: "the provisions of this Act shall not be construed as to prejudicially affect the rights and privileges with respect to the employment of teachers enjoyed by Roman Catholic and Protestant separate school boards under The British North America Act, 1867."

The trustees expressed concern about "open-scope" bargaining prior to the enactment of Bill 100, and have continued to express the same concerns to this Commission. We heard strong argument from the OSTC and many individual school boards in support of the position that the scope of negotiations should not "infringe upon the right of a board to carry out its duties and responsibilities pursuant to legislation and regulations and the right of a board to determine the programme and the number and deployment of staff."[11] The trustees' concerns are succinctly stated in the OSTC Brief:

> Teachers' federations are going to try to establish and maintain as large a teaching force as possible, in order to provide jobs for their members. The federations are bound to have a concern for their dropping numbers of fee-paying members which may erode their power base.

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[11] Ontario School Trustees' Council Brief, p. 22.

> They will want to control as many aspects of teacher hiring, deployment, retention, seniority, promotion, demotion and compensation as they can grasp. While trustees are willing to engage in bargaining for the recognized areas of agreement, they do not believe the scope of bargaining should include the number of teachers to be hired nor the deployment of teachers in the system for sound efficient and economical management. In a declining enrolment situation, the education enterprise cannot accept the practice of 'feather-bedding' in order to retain jobs for teachers who are not necessary to the system.[12]

As elected officials who are responsible to a rate-paying public, trustees feel that they must maintain accountability for the costs of education and the quality of program they provide. Yet they claim they are unable to "hold the line" on issues they regard as being vital to these ends. Trustees are concerned that if one board gives way on an item under pressure from its teachers, the stage would be set for the federations to "whipsaw" other boards into similarly relinquishing their rights.

The trustees claim they are in a "lose-lose" situation. Even if they resist giving in to teacher demands, they feel they will be forced to accept a strike which may ultimately be resolved by voluntarily entering into, or being legislated into, arbitration wherein the arbitrator may decide to give their rights away on the basis of settlements reached by neighbouring boards. For these reasons, they feel that their management rights should be protected by legislation.

The teacher federations, on the other hand, are adamant that open-scope negotiations are the keystone of the whole negotiation process. They view the history of collective bargaining as the steady erosion of management rights. According to the OSSTF Brief:

> There has been a steady move away from the master-servant relationship towards democracy in the work place. The

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[12]pp. 20, 21.

> lament by boards of derogation of public authority is a cry for statutory powers to prevent this evolution from happening and fails to recognize that this process of maturation will not be stopped by laws. Boards and teachers will continue to solve their own problems between themselves as they arise.[13]

The Commission has carefully studied this issue, and has come to the conclusion that open-scope negotiation is in the best interests of the parties' relationships under Bill 100. It should be noted here that the Association of Large School Boards also supports the open-scope bargaining currently allowed under Bill 100.

We are aware of statutes in other jurisdictions which limit negotiable items, but they have not prevented the parties from bargaining issues which they deem important to their relationship. In British Columbia, for example, bargaining in education is limited by legislation to salaries and other bonuses, yet some collective agreements in the larger urban boards contain working-condition clauses that differ little from those found in Ontario.

We do not believe that a definition of "management rights" of school boards is practically possible beyond that currently set out in existing legislation and regulations. In our opinion, the decision on the number of teachers and their deployment cannot be isolated from other conditions of employment. The number and deployment of teachers by a board obviously affects the work-load of individual teachers. The only practical determination of management rights is through the collective bargaining process. Indeed, this seems to be the direction that the courts and labour relations boards have been following in Canada and the United States. We therefore see no merit in further complicating the bargaining process by creating an unclear definition of what is negotiable. Surely this would not facilitate the bargaining process or promote harmonious relationships between the parties.

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[13] Ontario Secondary School Teachers' Federation Brief, p. 14.

In fact, many school boards have already agreed to include staffing provisions in their collective agreements. To limit the scope of negotiations in the manner suggested by the OSTC would seem to imply the removal of these provisions from existing agreements. This would not only be impractical but also unfair to the teachers involved. In all likelihood, the teachers had to make trade-offs on other issues in order to get these provisions in the agreement in the first place. The removal of these provisions would require some form of compensation.

We are not completely sympathetic to the trustees' claim that the teachers' "whipsaw" tactics are causing the boards to lose their management rights. "Whipsawing" is a legitimate negotiating tactic used increasingly by school boards seeking to remove the rights conceded to teachers in previous negotiations. This procedure is currently being used by boards for "contract stripping", i.e., removing, or placing restrictions upon, cost-of-living adjustments, fringe benefit plans, retirement gratuities, sabbatical leaves and so on. The boards cannot, in all fairness, have it both ways.

Alternative approaches for resolving staffing issues are available. Provisions related to staffing need not be negotiated into a collective agreement. Consultative processes can be established by the parties so that the teachers can provide meaningful input into board policy decisions. This, of course, only works if the parties have a mature relationship based on mutual respect and trust. We suspect that some of the problems in teacher-school board bargaining have been caused by boards failing to live up to the informal agreements they have reached through consultation with their teachers. If these arrangements had formed part of the collective agreement, the teachers would have been protected, because the board's arbitrary actions would have been subject to the grievance procedure.

We believe that it is important for the long-term health of the parties' relationship that either party be free to air any legitimate concern at the bargaining table. To restrict the scope of bargaining by legislation could result in these complaints becoming suppressed, only to lie smoldering beneath the surface, ready to erupt in the form of a bitter strike at some future date

over some surrogate issue that is negotiable. Maintaining open-scope negotiations in the collective-bargaining process can assist in preventing unredressed concerns from inflicting harm upon the public in the form of an unnecessary strike.

As a final point, the inclusion of staffing provisions in the collective agreement does not always work against the interests of a school board. We are aware of situations where school boards have agreed to include staffing ratios in their agreement. These ratios represented board policies which had been in effect for several years, and which, in the light of experience, had not adversely affected the ability of the school board to manage the school system and to adapt to changing situations. Setting out agreed criteria for determining the staffing needs of a school system during a period of declining enrolment can sometimes remove unwarranted teacher concerns about future board actions, establish a sense of stability and improve staff morale.

We believe that the legitimate interests of both parties could be met if more emphasis was placed on improving the contract language. Staffing clauses can be developed which meet the needs of the teachers and at the same time provide school boards with the flexibility needed to operate the school system efficiently.

For all of the above reasons, the Commission recommends that the Act continue to provide that negotiations shall be carried out in respect of any term or condition of employment put forward by either party.

6. Third-Party Intervention

Bill 100 makes provision for various forms of third-party intervention during the course of negotiations between teachers and school boards. These include mediation, fact finding, voluntary binding arbitration, and voluntary binding final-offer selection.

6.a. Mediation*

Recommendation #25

The Commission recommends that provision for mediation of disputes continue to be provided under Bill 100.

Section 14 of Bill 100 states: "The Commission [ERC] may, in the exercise of its own discretion, at any time assign a person to assist the parties to make or renew an agreement." This section generally refers to the appointment of mediators, but it could involve the formal assignment of ERC field-service officers, budget experts, or any other person or persons who may be able to assist the parties in reaching a settlement.

The Commission heard from both the federations and the boards that mediation has proven to be helpful in a number of instances. We also know it to be a useful process in negotiations in other sectors. The Commission therefore recommends that mediation continue to be provided under Bill 100.

Recommendation #26

The Commission also recommends that Bill 100 be amended to make it clear to the parties that the Education Relations Commission has the authority to send in, at any time, a "strike-mediation team" which may, if required by the Education Relations Commission, make public recommendations, including recommendations on the terms of settlement.

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*See a dissent later in this section (item 6j).

We are fully aware that this is not a common method of resolving disputes, and that it should be used with utmost discretion, but we feel such measures are sometimes justified in the public interest.

6.b. Fact finding*

Recommendation #27

The Commission recommends that provisions for fact finders remain in Bill 100 but be amended to provide,

(a) that fact finding may be requested by either party at any time after 75 days from the date of notice to negotiate and that the Education Relations Commission shall appoint a fact finder as soon as possible;

(b) that in the absence of a request to do so by either party, the Education Relations Commission may appoint a fact finder at any time (as now in Bill 100) and that if no agreement is reached by November 1 following the end of the previous contract the Education Relations Commission shall appoint a fact finder as soon as possible;

(c) that the fact finder should make recommendations for settlement of all matters remaining in dispute, and that the Education Relations Commission has authority to require the fact finder to do so;

(d) that when the fact finder's report is published, the recommendations may be released at the discretion of the Education Relations Commission;

(e) that section 27(3) of Bill 100 clarify that if agreement is reached during the five-day deferral of the release of the report to the public, the report shall not be released by the Education Relations Commission, by either of the parties or by any other person; and

(f) that the parties may resume negotiations prior to the release of the fact finder's report.

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*See a dissent later in this section (item 6j).

The purpose of fact finding is three-fold:

(1) to facilitate communication between the parties by providing them with the facts of each other's position at a particularly critical stage in the negotiation process, i.e., prior to the parties' being in a position to invoke sanctions. This is important because it creates an opportunity for the parties to restore a more rational approach to bargaining by diverting their attention from the personalities involved and focusing it on the facts in dispute. If experienced negotiators are employed by both sides, this communication function may be less essential. However, when inexperienced negotiators are at the table, emotions can sometimes get out of hand and create an impediment to proper communications. In these situations, the fact finder can offer useful assistance to the parties.

(2) to provide the public with the facts in dispute. Implicit in this is the belief that the public has a right to know what the issues are, and each party's positions on those issues, prior to the teachers' voting to go on strike or the boards' voting to lock out. The public, in this case, also includes the trustee and teacher constituents. This process is expected to press the parties to abandon unreasonable positions and to adopt more conciliatory stances. If the parties persist in maintaining unreasonable positions, the publication of the fact finder's report could, at least theoretically, help to mobilize public opinion and exert pressure on the parties to revise their positions. Such an effect would be more likely if the fact finder's report contains recommendations.

(3) to provide non-binding recommendations by a neutral third party. These recommendations might well represent an approximation of what an arbitrator might award if the parties were to have their dispute resolved ultimately by either voluntary or compulsory arbitration.

The fact finder, in providing these recommendations, essentially makes a judgment about what constitutes an equitable settlement based on the trends that are emerging from past and recently negotiated settlements. The recommendations telegraph to each of the parties some advance warning of what they can expect if the

dispute "goes the distance". In this sense, fact finding offers reasonable parties an important chance to reassess their positions and avoid the use of unnecessary sanctions.

The first function of fact finding, i.e., facilitating agreement between the parties by improving communications, is of course one of the functions that is common to mediation. The second function of fact finding, i.e., reporting the facts of the dispute to the public, could also be performed by a mediator who has concluded that the parties cannot be brought together. The third function of fact finding, i.e., making public recommendations as to what the settlement package should be, is not a normal function of mediation. Because of the highly confidential nature of the information being exchanged in the mediation process, there is considerable risk that the effectiveness of a mediator could be jeopardized if the parties knew that a public report with recommendations might ultimately be required of the mediator.

The third function of fact finding clearly distinguishes it from the mediation process. Whether a fact finder chooses to perform this function is optional under Bill 100. Section 21(2) of Bill 100 says that "a fact finder may, in his report, include his findings in respect of any matter that he considers relevant to the making of an agreement between the parties and recommend terms of settlement of the matters remaining in dispute between the parties" (emphasis added).

The ERC has just completed and published an in-depth study of the fact-finding process.[14] There is no need to report all of the findings of the study here, except to emphasize the following findings. Virtually all fact finders now appointed by the ERC attempt to provide the parties with recommendations for resolving their dispute. According to a survey of the local affiliates and school boards, a majority is in favour of fact finders making recommendations. In addition, the analysis of the fact finders' reports indicates that 60-70 percent of their recommendations are

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[14] An Evaluation of Fact Finding Under the School Boards' and Teachers' Collective Negotiations Act, 1975 (Toronto: Research Services, Education Relations Commission, 1979).

accepted by the parties in whole, or in part, and are included in their collective agreements. Finally, the ERC study shows that fact finding was most successful in assisting the parties to reach agreement if the fact finders made clear and specific recommendations.

The Commission is convinced that in the public interest a report delineating the positions of the parties on all matters agreed upon and all matters remaining in dispute must be made available to the public before a strike or lock-out vote is taken. The Commission further believes that fact finders should endeavour to make recommendations for settlement on all matters remaining in dispute, and that the ERC should be given the authority to require the fact finder to provide recommendations if the ERC has reason to believe the bargaining process and the public interest would be served by such action.

The Commission heard general support from the OTF and the OSTC for the concept of fact finding, but also heard concern expressed about the quality of some individuals employed in the role of fact finder, and about the inadequate publicity given to fact finders' reports when they are released.

The Commission was also told by several teacher and trustee organizations that the mandatory requirement to appoint fact finders immediately after the expiration of the collective agreement, i.e., in September, was becoming counter-productive. Although most parties wanted fact finding to remain compulsory before a strike, they wanted to have greater control over the actual timing of the appointment. There seemed to be considerable interest in allowing the parties the opportunity to request fact finding prior to the expiry of the current agreement so that the negotiations process could be speeded up. We therefore recommend that fact finding may be requested by either party at any time after 75 days from the date of "notice to negotiate", and that the ERC shall appoint the fact finder as soon as possible.

There may be instances where one or both of the parties are not engaging in serious negotiations and some form of external pressure must be brought to bear on the recalcitrant party or parties. We therefore recommend that a fact finder may be appointed at any time by the ERC in the absence of a request from either party. (The ERC has the authority to do this under the current Bill 100.) We further recommend that a fact finder shall be appointed as soon as possible by the ERC if no agreement is reached by November 1 following the end of the previous agreement.

The Commission was also told of situations where the publication of the fact-finder's recommendations polarized the parties, and made it difficult for one or both sides to withdraw from a bargaining position. In these rare cases, it would have been helpful if the ERC had had the discretion to withhold the publication of the fact finder's recommendations, and we believe the public has a right to have access to these recommendations, we do feel that under extenuating circumstances the ERC should have the authority to determine, at its discretion, whether the public interest would be served further by not releasing the fact finder's recommendations to the public.

All of the time limits concerning the submission of the report, its public release date, and the various extensions which can be granted in these time limits, should remain as they are in Bill 100. We would like to draw attention, however, to one ambiguous section of Bill 100. Section 27(3) states that if both parties request, and the ERC approves, the public release of the report can be deferred for an additional five days. It is not clear whether the fact finder's report must be released to the public if the parties reach an agreement during this extension. Since little useful purpose can be served by publishing the fact finder's report after the parties have reached settlement, the Commission recommends that section 27(3) be amended to make it clear that the report shall not be made public by the ERC, by either of the parties, or by any person, if an agreement has been reached during this five-day extension.

Some teachers and trustees apparently believe that bargaining may not occur during the fact-finding process. In our opinion, this may unnecessarily delay the bargaining process in some instances, and therefore we recommend that Bill 100 be amended to clarify that the parties may resume negotiations prior to the release of the fact finder's report to the parties.

6.c. Voluntary arbitration

Recommendation #28

The Commission recommends that Bill 100 continue to provide for voluntary arbitration as one means of concluding negotiations and that Bill 100 be amended (1) to allow the parties to design and use any form of arbitration which they believe is suitable and desirable in the particular circumstances, (2) to provide that the government, through the Education Relations Commission, pay the fees of an arbitrator if both parties in a negotiation voluntarily agree to arbitration and that in such instances the Education Relations Commission shall set the fees and allowable expenses.

Bill 100 provides the parties with several alternatives to strike and lock-out. Part IV of Bill 100 sets out the procedures to be followed if the parties mutually agree to send their dispute to voluntary binding arbitration.

A review of the record of negotiations indicates that the parties have not made frequent use of arbitration. More than 900 sets of negotiations have taken place between teachers and school boards during the last five years, yet voluntary arbitration has been used on only 26 occasions.[15] These data indicate that teachers and boards prefer to arrive at their own negotiated settlement, and are reluctant to transfer decision-making to an arbitrator.

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[15]In addition, during the first year of Bill 100 (1975-76), the Ontario Legislature imposed compulsory arbitration on the parties five times.

Although most teachers and trustees vigorously oppose arbitration as the sole means of dispute resolution, all agree that provision should continue to be made in the legislation for the parties, by mutual agreement, to request binding arbitration.

We believe that the arbitration process could be made more appealing to the parties as a means of avoiding the use of sanction, or as a means of ending the use of sanctions, if certain modifications were made to reduce the problems associated with arbitration mentioned previously. (See section G.2.a., The right to strike.) With this end in mind, the Commission recommends that Bill 100 be amended to make it clear to the parties that they are free to design any form of arbitration procedure tailored to resolve their unique problems. A few parties are already experimenting with hybrid procedures such as "med-arb" (a combination of mediation and arbitration conducted by the same individual). The legislation should provide for these flexible approaches. It has also been suggested to us that the parties should be free to refer some issues to arbitration while continuing to negotiate on a few remaining items. (Under the current legislation, it appears that such a procedure is not allowed.) We see no reason that Bill 100 should restrict the parties from using any method they deem appropriate for achieving a settlement.

To encourage further the use of arbitration, the Commission recommends that Bill 100 be amended to provide that the government, through the ERC, will pay the fees of an arbitrator (or final-offer selector) if the two parties voluntarily agree to use either process. If appointments are made under these arrangements, we recommend that the ERC be responsible for setting the fees and allowable expenses.

6.d. Voluntary final-offer selection

Recommendation #29

The Commission recommends that Bill 100 continue to provide for final-offer selection as one means of concluding negotiations and that Bill 100 be amended (1) to provide that neither party having agreed to the proceed-

> ings shall withdraw from them, (2) to provide guidance to the selector in distributing the award, (3) to allow the parties to design and use any form of final-offer selection which they believe is suitable and desirable in the particular circumstances, and (4) to provide that the government, through the Education Relations Commission pay the fees of a selector if both parties in a negotiation voluntarily agree to final-offer selection and that in such instances the Education Relations Commission shall set the fees and allowable expenses.

Final-offer selection (FOS) is a relatively new form of arbitration. It is now being used to resolve public employee disputes in several jurisdictions in the United States. The exact nature of the process varies from one statute to another, but in essence, it involves the submission of each party's final position to a neutral third party who then selects, without modification, the most reasonable position. This award then becomes binding upon both parties. In some statutes, a single selector is used; in others, a tripartite panel is appointed. Sometimes the selection method is limited to choosing the entire package of items submitted by either party; in other situations it is based on an issue-by-issue selection process. Experimentation with the procedure continues, and there has not yet been a method devised which has met with universal acceptance as being the best procedure available.

Final-offer selection was designed to overcome the "chilling effects" of conventional arbitration. Unlike conventional arbitration, the selector does not have the flexibility of fashioning a compromise between the parties' positions. The win-lose character of final-offer selection was purposely designed to draw the parties toward a compromise and toward the security of finding their own agreement. Final-offer selection tends to increase the risks of handing a dispute over to a third party, and therefore encourages negotiators to assume proper responsibility for their own collective-bargaining destiny.

Although final-offer selection has some advantages over conventional arbitration, it still has many disadvantages. The standards used by final-offer selectors are difficult to determine, and it is therefore difficult for the parties to know how to evaluate their positions prior to submitting them to a selector. The process also carries with it the risk that one party may try to insert in its offer a "sleeper" item that may, if awarded, damage the parties' long-term bargaining relationship. A further danger is the possibility that both parties may submit totally unacceptable offers, thereby forcing the selector to impose an inappropriate award.

Multi-issue disputes pose serious problems for final-offer selection. In such disputes, final-offer selection can lead to "big winners" and "big losers", and thus perpetuate antagonistic attitudes. The lack of flexibility in the procedure prevents a selector from designing a more equitable award or otherwise providing a solution that allows each side "to save face". (This is an important concern, because if one side has been humiliated, there are strong pressures to redress the situation in subsequent negotiations.) Sometimes selectors try to engineer compromises by "flip-flopping" their awards over a period of time between union and management. This "intertemporal compromising" is more likely to occur if the selector has been used previously by the parties, or is closely familiar with the history of their relationship.

Final-offer selection in other statutes has been defined as a <u>substitute</u> for conventional arbitration and/or the right to strike. In Bill 100, it is an <u>alternative</u> to arbitration, or the use of a strike. This is an important distinction, because the usual advantages attributed to final-offer selection do not apply under Bill 100 to the same extent as they do under other legislation. Under Bill 100, the pressure to make concessions during the negotiations process comes from the knowledge that each of the parties can bring sanctions to bear upon the other. Final-offer selection itself has no effect on the normal course of negotiations, because it cannot be invoked unless both parties mutually

agree to its use. The only real advantages to final-offer selection under Bill 100 are that: (1) it should encourage the parties to submit reasonable offers to the selector, and (2) it restrains selectors from "splitting the difference" between the parties' positions.

Final-offer selection has not been widely used among teachers and school boards in Ontario. In the more than 900 sets of negotiations which have taken place over the last five years, only twelve have been settled by final-offer selection and one of those was the result of compulsory legislation. Its use also seems to be diminishing over time. It was employed five times in 1975-76; three times in 1976-77; twice in 1977-78; once in 1978-79; and once, to May 14, in 1979-80.

Although we recommend that final-offer selection should remain basically the same as that set out in Part V of Bill 100, we would recommend two minor changes.

At present, either party can withdraw from the final-offer-selection process prior to submitting its offer to the selector. We feel this provision is unnecessary, and the conditions for consenting to FOS should be consistent with those applying to the use of voluntary binding arbitration (see section 29(2)). We therefore recommend that section 38(2) be amended to require that the parties shall give to the Commission a written statement signed by the parties setting out that neither party will withdraw from the proceedings, and that the decision of the selector will be accepted by the parties as binding upon them.

Furthermore, there is no clause in Part V which gives guidance to the selectors on how they should go about distributing the award as is the case with an arbitrator or board of arbitration (see section 36(1)). We therefore recommend that section 48 be changed to require selectors to report their decisions in writing to the parties, and to the Commission, with the time limits specified in Bill 100.

Because the final-offer-selection process provided for in the legislation has not been widely used, we believe that Bill 100 should include a clause which makes it clear that the parties are free to enter into any final-offer-selection procedure of their own design. For example, it has been suggested to us that Bill 100 be amended to allow for an item-by-item selection method. We have no disagreement with this recommendation, except that it may not go far enough. Some parties may wish to experiment with other changes in the final-offer-selection procedure, such as the use of a tri-partite panel, the design of explicitly stated selection criteria, the use of final-offer selection for some items and conventional arbitration for others, mediation - final-offer selection or other unconventional arrangements. We therefore encourage the parties to experiment with new forms of final-offer selection. We suggest that Bill 100 be amended to make certain that it does not present any statutory obstacles to such experimentation.

6.e. Voluntary non-sanction route

Recommendation #30

The Commission recommends that Bill 100 provide the option for the parties, by mutual agreement, to choose a non-sanction route and to waive their rights to strike and lock out.

The Association of Large School Boards in Ontario has suggested a non-sanction route which we describe here for purposes of illustration.[16] The Association recommended that within sixty days of filing notice to negotiate a new agreement, the parties should be free to give up voluntarily their right to strike or lock out. Bargaining would continue until August 31, and if no agreement was reached, a fact finder would be appointed by the Education Relations Commission. The fact finder would be required to make recommendations on all outstanding issues and report to the ERC within thirty days. Time extensions could be granted if agreed upon by both parties. At any rate, the report would be sent to the parties, and they would have fifteen days to reach a settlement before the report was made public. If agreement was not reached within

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16 See Ontario School Trustees' Council Brief.

thirty days following the public release of the report, the parties would be required to submit the remaining issues in dispute to a selector who would choose as the basis of settlement either: (1) the recommendations of the fact finder; or (2) the position of the board; or (3) the position of the teachers.

The suggested "non-sanction route" which is permissible in the current Bill 100 has much in its favour. It strengthens the role of the fact finder. Both parties would be more likely to pay attention to the fact finder's report if they knew that it could form the basis of the selector's award. It would also give the parties an idea of how a third-party neutral views their positions, and thus should help the parties to converge voluntarily on an equitable solution to the dispute. Secondly, the final-offer-selection procedure would be made more flexible than the one now contained in the legislation. The fact finder's recommendations gives the selector an important third choice in the event that both parties submit extreme offers. Thirdly, if the selector were free to choose the fact finder's recommendations, it might reduce some of the "win-lose" characteristics of the final-offer-selection procedure that is currently in Bill 100. Finally, if this alternative to the strike route were placed in the legislation, it might provide the community with a focus for applying pressure on the parties.

We heard in our public hearings that some trustees disagree with the proposal of the large school boards because they think that if an alternative to the strike route were available, the community would pressure both parties into accepting it. In our opinion, the community has every right to pressure the parties into taking this action. We have heard many times during the course of our public hearings that strikes can often be predicted well in advance of their occurrence, and that they are the culmination of hostilities built up over a period of years. Why should not the public, if it perceives that a strike is inevitable, have the opportunity of applying pressure on the parties to adopt a "strike-like" substitute? Granted, the community would be indirectly handing over its right to determine the nature of some part of its school system to an outside third party who is not accountable to

the electorate, but if the community sees this as the lesser of two evils, then is this not its prerogative? Although we are not in favour of removing the right to strike or lock out, we nevertheless see merit in providing some mechanism that allows the community to have an impact upon the course of a dispute. The community under present circumstances may not feel that it has the power to prevent strikes from occurring. The Commission, therefore, recommends that Bill 100 provide the option for the parties to choose a non-sanction route to settlement.

6.f. Panel of arbitrators and selectors

Recommendation #31

The Commission recommends that the Education Relations Commission provide for the establishment of a panel of highly qualified arbitrators and selectors.

An arbitrator or selector who is to resolve a problem must learn a great deal about the particular situation to render a useful decision. Most arbitrators prefer to find comparable situations that have been resolved through free collective bargaining. There are, however, circumstances in which arbitrators may be required to initiate or create solutions to specific problems which have not been considered in other jurisdictions.

We believe that it would be beneficial to establish a panel of arbitrators and selectors who not only are aware of the patterns that exist, but also are cognizant of possible new approaches and their potential ramifications. If such a panel were established the parties might be more willing to use a non-sanction route to a collective agreement or, in the case of normal negotiations' breaking down, to use the services of one of the panel of arbitrators and selectors. The expertise of the panel and the panel members' willingness to "break new ground" would have a salutary effect, and would produce more sensitive decisions.

6.g. Criteria for consideration by third-party intervenors

Recommendation #32

The Commission recommends that Bill 100 be amended to provide a more extensive list of criteria to be considered by fact finders, arbitrators and selectors in making these awards.

Most labour laws which provide for third-party intervention (other than in the form of conciliation or mediation) specify the kinds of criteria the intervenors should take into consideration in framing their judgments. Under Bill 100, such criteria should be provided for fact finders, arbitrators and final-offer selectors.

Section 22 of Bill 100 now specifies a fairly limited range of criteria for fact finders only. They include the conditions of employment in occupations outside the public teaching sector, the effect of geographic or other local factors on the terms and conditions of employment, the cost to the board of the proposal of either party and the interest and welfare of the public. At the very least, we would add to this list changes in the cost of living, shifts in productivity both within and beyond the education system, and the state of the market or supply and demand for teachers.

Many other statutes also specify that third-party intervenors be allowed to consider any other factor which they deem germane to the dispute in question. Perhaps Bill 100 should allow for such a consideration since third-party intervenors seem to be influenced by other factors.

The Commission urges that a more complete and definitive list of criteria be included in Bill 100. In addition we stress that third-party intervenors should be required to frame their judgments in the light of these criteria. Finally, we emphasize that no third-party intervenors should rely on any criteria not specifically included in Bill 100 unless they have so alerted both parties prior to the completion of the applicable hearings.

6.h. Exclusion from appointment as a third-party neutral

Recommendation #33

The Commission recommends that Bill 100 be amended to provide that persons appointed as mediators, final-offer selectors, fact finders or arbitrators shall have no pecuniary interest in the matters coming before them, and are not acting, or have not acted on behalf of either party within six months immediately before the date of appointments, unless both parties agree to waive this requirement.

Currently, Bill 100 provides the restrictions included above with respect to persons who may be appointed as arbitrators. We believe that those restrictions should apply to all persons being appointed as third-party neutrals. In all cases, however, we recommend waiver of this requirement if both parties agree.

6.i. Adherence to timelines of third-party intervenors

Recommendation #34

The Commission recommends that Bill 100 be amended to provide that mediators, fact finders, arbitrators and selectors have the authority to set dates for hearings, and enforce adherence by the parties to reasonable time-lines.

To facilitate the work of third-party intervenors and to discourage deliberate stalling by one or more of the parties, we believe mediators, fact finders, arbitrators and selectors should have authority to set times and dates.

6.j. A dissent on fact finding, mediation and certain related points

It is with considerable regret that I find I must dissent from my colleagues' views on fact finding, mediation and certain related matters. I do not share their view that fact finding is such an

indispensable and invaluable process that it should be continued as an automatic and compulsory step in the negotiating procedure before a strike or lock-out can take place. It apparently matters not to my colleagues whether one or the other side or both are opposed to the imposition of fact finding even though this process is much more judgmental than conciliation or mediation.

I cannot go along with the mandatory imposition of fact finding before a work stoppage occurs. I would only make fact finding available before a strike or lock-out if both sides wanted it. I would also allow the ERC to impose it after a legal strike or lock-out has begun.

I have several interrelated reasons for opposing my colleagues' recommendation on fact finding. My basic concern is that not enough reliance is placed on mediation under Bill 100. Experience with mediation in virtually all Canadian and free-world jurisdictions reveals it to be by far the most effective third-party technique for resolving labour-management disputes.

Under Bill 100 mediation is a much neglected technique. A later table in Appendix VII - as misleading as it may be in this context - reveals that in some years mediation precedes fact finding in less than 25 percent of the cases in which the latter is imposed. Moveover, after fact finding, mediation has been brought into play in roughly half the cases. These statistics really speak for themselves: mediation is underutilized before fact finding, when it could be most effective, and then heavily relied upon after fact finding to help bail out that process.

I would make mediation the only mandatory form of third-party intervention before a strike or lock-out takes place. I would not follow it with automatic or compulsory fact finding because that would tend to undermine it. After all, it stands to reason, and experience reveals, that if both parties know that any other form of third-party intervention is going to follow mediation they will tend to hold back in the hope that they may do even better at a later stage.

As for my colleagues' concern about "the public's right to know", I would leave it to the mediator to spell out the final position of the parties if he or she cannot resolve their differences. Since the public pays little or no attention to "the facts" in these cases in any event, I am not as preoccupied as they are to have the judgment of so-called independent and objective third parties put before the public before there is a real problem.

My final point is that fact finding is becoming part of a protracted ritual dance under Bill 100. This becomes especially apparent in those cases where mediation takes place both before and after fact finding. Fact finding could play a much more useful role under Bill 100 but only if both parties want it or the ERC deems it appropriate after they have become embroiled in a dispute.

That is why I so recommend. Accordingly, as I have already indicated, mediation would become the only automatic or compulsory process before a work stoppage could occur. By implication and inference this dissenting set of viewpoints also leads me to depart from the Commission's recommendations on a number of minor ancillary and related points consisting of such things as time lines which require no elaboration.

(John Crispo)

7. Time Lines

Recommendation #35

The Commission recommends that Bill 100 be amended to provide,

(a) that notice to negotiate must be given within the month of February of the year in which the existing agreement expires;

(b) that negotiations shall begin within fifteen days of the giving of notice;

(c) that within 30 days of notice, each party must present to the other party, in writing, all of the items on which it wishes to negotiate, together with a detailed justification of the changes requested, item by item;

(d) that after 30 days of notice, either party may request a mediator, and the Education Relations Commission, at its discretion, may appoint;

(e) that 75 days or more after notice, either party may request a fact finder and the Education Relations Commission shall appoint a fact finder as soon as possible; and

(f) that 15 days after the fact finder's report has been made public, but not earlier than September 1, "last-demand" and "last-offer" and strike or lock-out votes may be called by either party.

The view that negotiations under Bill 100 in many instances extend over an unreasonable period of time was expressed by almost everyone who appeared before the Commission.[17] There have been instances in which negotiations to establish a collective agreement have extended over more than twenty months. On occasion "notice to negotiate" a new agreement for the succeeding year has been given (as required under Bill 100) even as negotiations were proceeding for the current year.

We must state, however, that there is nothing in Bill 100 that requires negotiations to take so long. There is a suspicion that in some instances one party or the other may "drag its feet" in negotiations. Bill 100 does not provide adequate mechanisms for one party to bring effective pressure on the other to move rapidly in the negotiations.

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[17] The timing of settlements for the period 1976-80 is contained in Appendix VIII.

It was often stated to the Commission that the present provision of Bill 100 that "notice to negotiate" be given prior to January 31 does not initiate much effective negotiation. Meetings held in February and March do not seem to have been very productive. Both parties take much time to prepare their positions. Information required by boards, such as government grants and estimates of numbers of pupils, is not usually available until March or April.

The giving of notice at a later date should save time at the beginning of the negotiation process. The Commission therefore recommends that Bill 100 be amended to provide that either party to an agreement may give written notice to the other party within the month of February, in the year in which the agreement expires, of its desire to negotiate a new agreement.

Within fifteen days of the giving of notice, the parties should be required to meet and to begin negotiations in good faith, and make every reasonable effort to reach an agreement or to renew the agreement. Within thirty days of the giving of notice, each party must present to the other party all the items on which it wishes to negotiate in the new agreement, together with a detailed justification of the changes requested, item by item.

After thirty days of the giving of notice, either party may request mediation, and the ERC shall at its discretion appoint a mediator as soon as possible to assist the parties in reaching an agreement.

Both the teachers and the trustees have emphasized to the Commission that negotiations should be maintained at the local level for as long a period as possible, and that third-party assistance should not be called in as long as it is felt by both parties that significant progress is being made. However, both trustees and teachers have expressed support for mechanisms that would allow either party to request some form of third-party assistance if it believes that an impasse is becoming apparent.

The Commission recommends that Bill 100 be amended to provide that 75 days after the notice to negotiate either party may request the ERC shall so appoint as soon as possible.

Bill 100 currently provides that a strike may not begin until 15 days have elapsed after the ERC has made public the report of the fact finder. This same pre-condition should apply for the initiation of a lock-out, or for the initiation of change in the terms and conditions of employment. Furthermore, the Commission is persuaded that September 1 (the day after the end of the previous agreement) should be the earliest date for initiation of sanctions, i.e., partial withdrawal of services, full strike, change in terms and conditions of employment, or lock-out, provided that all pre-conditions are met by both parties. These pre-conditions are as follows: (1) notice to negotiate has been given as above; (2) at least fifteen days have elapsed since the fact finder's report, with or without recommendations, was released to the public; and (3) the previous agreement has expired.

In effect, the Commission is recommending that Bill 100 be amended to provide that either party, by taking appropriate action, can place both parties in a position to strike, or lock out, or change terms and conditions of employment, early in September. A strike or lock-out at this time in the school year would cause less jeopardy to the "innocent" third party, i.e., the students, but would still allow teachers and boards to put pressure on each other.

A suggestion made to us by one student group was that if a strike or lock-out was not initiated in September, then those sanctions should not be permitted until the next September. The argument was made that a strike at any time later in the school year was so disrupting to the student's education that it should not be allowed. The Commission believes, however, that such a requirement in Bill 100 could put undue pressure on the parties to reach agreement by September. We prefer that pressure to reach agreement by September be applied by one party on the other, rather than by legislation.

A situation can be visualized, for example, in which negotiations are proceeding to the satisfaction of both parties, yet agreement is not reached by September. It would not be wise to put legislation in place that would require the parties to stop and consider whether to have a strike or lock-out vote simply because it may be the last chance to do so until the next September. Such a requirement could jeopardize otherwise effective negotiations.

The Commission is recommending these changes in methods of negotiations in the belief that the changes will provide both parties with more direct control over the progress of negotiations. We would expect, however, that in most instances negotiations would proceed effectively, and perhaps none of the permissive steps would be initiated by either party.

The Commission is aware of the fact that traditionally, negotiations between teachers and school boards do not make much progress during July and August. Teachers say that trustees are not available to meet because of holidays. Trustees say that teachers are not available to meet because of holidays and summer courses.

The Commission believes that those teachers and trustees who agree to serve on negotiating teams have an obligation to make every effort, if necessary even in July and August, to negotiate a new agreement. The potential penalty to be paid by students, teachers and parents is so great that a July-August hiatus in negotiations ia unacceptable unless, of course, agreement is reached by the end of June.

8. Grievance Arbitration

Recommendation #36

The Commission recommends that the grievance procedure set out in Bill 100, section 53, be amended to include the following:

(a) that both parties should be required to file written briefs with the arbitrator in advance of the hearing date;

(b) that the arbitrator should have the authority to determine whether a matter is arbitrable; and

(c) that each of the parties should pay one-half of the fees and expenses of the person appointed, and such fees and expenses should be paid within 60 days after the issuance of the decision by the arbitrator.

Bill 100 requires that every collective agreement include a method of reaching final and binding settlement of all differences arising from the interpretation, application, administration or alleged contravention of the agreement. Where such a method is not contained within an agreement, section 53 sets out a procedure to be followed.

The Commission is of the opinion that some of the costs and delays associated with the grievance procedure could be minimized if the parties were required to file written briefs with the arbitrator before the hearing date.

Arbitrators and boards of arbitration appointed pursuant to section 53 have assumed that they have jurisdiction over whether a matter is arbitrable. This should be clearly indicated by inserting a provision in section 53 similar to that which is found in section 37(2) of The Ontario Labour Relations Act.

Section 53 does not specify how the arbitrator's fees shall be paid. We therefore recommend that a provision similar to that contained in section 37(5) of The Ontario Labour Relations Act be included in section 53 in Bill 100.

It should be understood, however, that Bill 100 should continue to allow the parties the freedom to agree on their own procedure for the resolution of matters arising out of their collective agreement.

Recommendation #37

The Commission recommends that the grievance procedure set out in section 53, or any alternative grievance procedure negotiated by the parties, must require,

(a) that arbitrators or boards of arbitration have powers similar to those granted under sections 37(7) and 37(8) of The Ontario Labour Relations Act; and

(b) that each party, and the arbitrator or board of arbitration, file a copy of the decision with the Education Relations Commission.

The Commission is of the opinion that section 53 of Bill 100 and any alternative grievance procedures designed by the parties, should provide arbitrators and boards of arbitration with the power to summon witnesses and administer oaths. These powers have been granted to voluntary interest arbitrators and boards of arbitration under Bill 100, and to grievance arbitrators under The Ontario Labour Relations Act.

The Commission believes that each party and the arbitrator or board of arbitration should be required to file a copy of the decision with the ERC. This would assist the ERC in preparing and distributing summaries of these awards to interested teachers and trustees in other parts of the province. This information can be helpful to the parties in drafting improved contract language.

9. Good Faith Bargaining

Recommendation #38

The Commission recommends that Bill 100 continue to contain a good faith requirement, but that this requirement be limited to an obligation to meet and exchange positions and to cooperate with authorized third-party intervenors.

Bill 100, as is the case of most labour relations acts, contains a provision requiring the parties to bargain in good faith. Sometimes this is stated as a duty to make every reasonable effort to reach an agreement.

In principle, it is hard to quarrel with such an obligation, since bad faith on either side is hardly conducive to harmonious labour-management relations. In practice, however, it is difficult to enforce such an obligation.

Labour relations boards in both Canada and the U.S. exercise authority over the parties by specifying how they shall bargain. However, we do not think that such authority is necessary under Bill 100, because there are already mechanisms in Bill 100 to test the good faith of the parties in negotiations. Mediation and/or fact finding, for example, tend to serve that purpose.

We believe that the "good faith" requirement should remain in Bill 100, but that it should be interpreted to mean simply that the parties are obligated to meet and exchange positions, and to cooperate with appropriate third-party intervenors.

10. Non-Discrimination

Recommendation #39

The Commission recommends that Bill 100 be amended to include a section containing some of the provisions of the "unfair practices" section of The Ontario Labour Relations Act.

This new section of Bill 100 should include the following provisions:

(1) that no school board shall refuse to employ or to continue to employ a teacher, or discriminate against a teacher in regard to employment, or any term or condition of employment, for participating in any lawful activities of that person's branch affiliate, affiliate or federation, or for exercising any other rights provided for under Bill 100;

(2) that no branch affiliate, affiliate or federation shall suspend, expel or penalize in any way a member who has refused to engage in, or to continue to engage in, a strike that is unlawful under Bill 100;

(3) that no school board shall,

(a) refuse to employ or continue to employ a person,
(b) threaten dismissal or otherwise threaten a person,
(c) discriminate against a person in regard to employment or a term or condition of employment, or
(d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that that person may testify in a proceeding under Bill 100, or because that person has made, or is about to make, a disclosure that may be required in a proceeding under Bill 100 or because that person has made an application or filed a complaint under Bill 100, or because that person has participated or is about to participate in a proceeding under Bill 100, and

(4) that no branch affiliate, affiliate or federation shall,

(a) discriminate against a person in regard to employment or a term or condition of employment, or

(b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that that person may testify in a proceeding under Bill 100, or because that person has made, or is about to make a disclosure that may be required in a proceeding under Bill 100 or because that person has made an application or filed a complaint under Bill 100 or because that person has participated, or is about to participate, in a proceeding under Bill 100.

11. Duty of Fair Representation

Recommendation #40

The Commission recommends that Bill 100 be amended to include a "duty of fair representation" clause, and to empower the Education Relations Commission to adjudicate alleged violations.

Under most labour relations statutes in Canada today, unions are obliged to provide their members with fair representation. Such an obligation rests upon unions, both during the course of negotiating a collective agreement, and during the course of the agreement itself.

A study of fair representation does not oblige a union to put forward every member demand, nor to process every grievance. Such an obligation would make a mockery of the collective bargaining process. Rather, the union need only be able to demonstrate that it has good and proper cause for any decisions it makes which may be construed to run counter to the interests of one or more of its members.

Every union must engage in tradeoffs among the interests of various groups of its members, as part of the collective bargaining which takes place both within unions as well as between unions and employers. As long as these tradeoffs are undertaken with the interests of total union membership in mind, one cannot usually quarrel with them. It is only when a union acts arbitrarily or capriciously in relation to any of its members that it should be vulnerable to a charge of failing to provide representation.

The Commission was encouraged to find that all of the teachers' federations were agreeable to a duty of fair representation clause under Bill 100. We are recommending that the ERC be given statutory authority to rule on all allegations of failure to provide fair representation.

A duty of fair representation similar to that applying to the teachers' federations should also apply to any school board, such as the Metropolitan Toronto School Board, vis-a-vis the individual boards it represents in common negotiations. Each of the latter should also have access to the Education Relations Commission if it believes its interests have been arbitrarily or capriciously sacrificed by the common body representing all of their interests.

12. Bill of Rights for Teacher Federation Members

Recommendation #41

The Commission recommends that Bill 100 be amended to include a Bill of Rights for teachers as members of the teacher federations.

After we reviewed all of the material before us, including that on the special privileges accorded the teachers' federations by Bill 100, the Commission came to the conclusion that a Bill of Rights for teachers as federation members was required. As pointed out earlier in this report, the federations and branch affiliates are recognized in Bill 100; there is no certification process. In addition, teachers are required by statute to belong to and pay dues to one of the federations.

Given these special privileges, it seems appropriate that the federations should be subject by statute to certain responsibilities and restraints in relation to their members. The Commission suggests that the Bill of Rights for teachers in the amended Bill 100 should prescribe among other things:*

- basic procedural rights in internal federation affairs;
- a guaranteed teacher's right to run for federation office and participate fully in all election processes;
- the right of each teacher to receive audited statements of federation financial affairs, the federation constitution and the collective agreement affecting employment;
- neutral machinery for appeal and review of action by the federation against a member; and
- the right of each teacher to be protected from unreasonable initiation fees, dues and other assessments by the federation.

The Commission suggests further that the Education Relations Commission have the authority to hear appeals by individual teachers against action by a federation, but only after the internal appeal procedures of the federation have been completed.

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*See Appendix IX.

In recommending that a Bill of Rights for teacher federation members be included in Bill 100, there is no implication that the federations have abused such rights in the past. The Commission believes that no group in society should enjoy the kinds of powers which the teachers' federations have over their members without those members have adequate recourse in the event that the powers are abused.

13. Education Relations Commission

The Education Relations Commission is an independent five-member organization established under Bill 100 to administer the legislation. The ERC has responsibility for: monitoring the course of negotiations; selecting and training fact finders, mediators, arbitrators and selectors; providing teachers, tructees, and third-party neutrals with research data; making determinations about good-faith bargaining; supervising secret-ballot votes; and advising the Lieutenant Governor in Council when a strike, lock-out or closing of a school or schools jeopardizes the students' chances of successfully completing their courses of study.

To assist it in carrying out its duties under Bill 100 the Commission has a staff organized into two functional sections (Field Services and Research Services), and an administrative support unit.

Members of the field services section monitor the progress of negotiations; design and implement training workshops for third parties; advise on the assignment of persons to assist the parties; appoint persons to conduct and supervise votes; provide the parties with informal assistance, and on occasion, perform formal mediation.

Members of the research services division provide neutral data on collective bargaining and related matters.

This Commission strongly suggests that the ERC continue the research activities it has undertaken to date and also pursue analytical studies of the bargaining process and various conflict-resolution strategies.

13.a. Appointment of third-party assistance

Recommendation #42

The Commission recommends that the Education Relations Commission be given sufficient resources to pay mediators, fact finders and arbitrators and final-offer selectors at levels which will ensure the selection and retention of qualified individuals, and that the Education Relations Commission provide more training workshops for such persons.

The main responsibility of the ERC is to monitor the negotiations process and provide third-party assistance as required by Bill 100. Since Bill 100 was passed, 345 fact finders, 240 mediators, 26 arbitrators and 12 final-offer selectors have been appointed by ERC.

We were told by ERC, as well as by federations and boards, of the difficulty in finding qualified persons to serve as mediators, fact finders, arbitrators and selectors. Therefore, the Commission recommends that rates of pay and training programs for such persons be adequate to overcome this difficulty.

Recommendation #43

The Commission recommends that the Education Relations Commission develop training workshops for grievance arbitrators, and investigate the feasibility of employing grievance-settlement officers.

Grievances arising out of differences in the interpretation, application, administration or alleged contravention of agreements are likely to increase significantly in the years ahead as the collective agreements become more and more complex. The Commission therefore believes that it would be useful to provide grievance-settlement officers to assist the parties who wish to resolve their dispute short of arbitration.

Recommendation #44

The Commission recommends that section 62 of Bill 100 be amended so that it is indentical to section 58 of The Colleges Collective Bargaining Act, 1975.

Section 58 of The Colleges Collective Bargaining Act, 1975 provides that no member of the College Relations Commission (CRC), or person employed by the CRC shall be required to give testimony in any proceeding under that Act. Section 62 of Bill 100 in contrast refers only to members of the Education Relations Commission (ERC) and not to persons appointed by the ERC.

We believe that exemption should apply to persons engaged by the ERC as well as to members of the ERC.

13.b. Information and publications

Recommendation #45

The Commission recommends that section 61(2) of Bill 100 be amended to provide that the Education Relations Commission may request a board or an affiliate to provide the information necessary for the Education Relations Commission to carry out its duties under Bill 100.

Recommendation #46

The Commission recommends that the Education Relations Commission continue to provide bilingual services, and that the necessary monies be allocated for this purpose.

To facilitate the collection of information, section 61(2) of Bill 100 gives the ERC the authority to request from school boards statistical information on the supply, distribution, professional activities and salaries of teachers, and the boards must respond to these requests within a reasonable period of time. We believe that the information should not be restricted to statistical information only.

We also note that the ERC publishes most of its information and research documents in both English and French. Comments and suggestions in several briefs to the Commission and in the public hearings made it clear that this policy should be continued.

14. Transitional and Language Clauses in Bill 100

Recommendation #47

The Commission recommends that sections 7(1), (2), (3) and (4), section 12(2) and sections 51(2) and (3) be deleted from Bill 100, that all references to "written collective understandings" be removed from Bill 100 except for section 1 (p), and that a new section 51(2) be written as follows: "A written collective understanding shall be deemed to be an agreement under Bill 100."

Prior to the introduction of Bill 100, some school boards and their teachers had entered into "written collective understandings" which had starting and termination dates that were inconsistent with those required by the Act. Several "transitional" clauses were needed at the time to bring these collective understandings into step with the legislation. These transitional clauses no longer serve any useful purpose.

Recommendation #48

The Commission recommends that section 63 of Bill 100 be rewritten as follows: "The moneys required for the purposes of the Education Relations Commission shall be paid out of the moneys appropriated therefor by the Legislature."

The source for funding the activities of the Education Relations Commission is defined in section 63 of Bill 100. It reads as follows: "Moneys required for the purposes of the Commission shall, until the 31st day of March, 1976, and subject to the approval of the Lieutenant Governor in Council, be paid out of the Consolidated Revenue Fund and thereafter be paid out of the moneys appropriated therefor by the Legislature." The reference to March 1976 is now obsolete.

Recommendation #49

The Commission recommends that the phrase "in effect" be used in lieu of the phrases "in force" and "in operation".

Bill 100 makes reference to agreements being "in force", "in operation" or "in effect" and a number of submissions have requested that Bill 100 contain uniform language throughout.

15. Other Matters

15.a. Vicarious responsibility

The OTF expressed a concern that section 80 of current Bill 100 placed a responsibility on the federation for actions of the branch affiliates, without giving the federation appropriate authority over the affiliates. The solution to this apparent difficulty offered by OTF was that OTF be named by statute as the bargaining agent for all teachers in Ontario. OSSTF, using a similar argument however, suggested that OSSTF be named by statute as the bargaining agent for all secondary school teachers in Ontario.

The Commission does not accept the suggestion that a provincial federation be named bargaining agent. The emphasis placed by teachers and trustees on the importance of retaining local control of negotiations was so strong that we do not wish to recommend any changes that might accelerate a shift to province-wide bargaining.

If there is a problem of the kind seen by OTF and OSSTF arising from section 80 of the current Bill 100, the Commission suggests that section 80 be amended to remove the difficulty. The Commission does not accept the solution suggested by OTF or OSSTF.

15.b. Teachers as trustees

Concern was expressed by some persons that teachers may be elected to school boards other than the board by which they are currently employed, and thereby be in a position of conflict of interest. The Commission understands the theoretical basis for that concern; however, it would not consider it fair to exclude a teacher from election to any school board in Ontario. At the same time, we believe that a teacher who is a trustee should not be a member of the board negotiating team. Even on this point, however, we would not recommend that there be any statutory exclusion.

15.c.Composition of negotiating teams

The Commission has suggested previously that the teachers and trustees should continue to explore ways and means of improving negotiations at the local level. Toward this end, teachers and boards might undertake initiatives to ensure that their negotiating teams are experienced in negotiation. More continuity and experience could be attained, in part by members of the negotiating team being required to serve for varying periods of time, with a rotating membership to allow continuity plus turnover.

School boards, for example, might remove trustees from the position of being spokesmen on the negotiating teams. The directors of a corporation do not become directly involved in union negotiations, and there is no reason why trustees should do so. On the other hand, the hiring of a consultant to do the negotiating is not usually desirable, because it reduces the teacher-board-administration contact. We believe that the negotiating team should include trustees, but that the actual negotiations should be done by an administrative officer of the board. The board, of course, would maintain control of the negotiations by authorizing the bargaining positions for its chief negotiator.

The Commission entirely supports the view of the Reville Committee as follows:

> Although the Committee of Inquiry is not making a recommendation that supervisory and administrative staff act as delegated authorities of the school board trustees in formal negotiations with the teachers, the members of the Committee feel that serious consideration should be given to such delegation of responsibility in negotiation procedures. In addition to the fact that trustees rarely can devote the amount of time required to do the task of negotiations thoroughly, they often do not possess the specific skills needed in the delicate operation. If an official of the school board's administrative staff is assigned the specific duty of negotiating on the board's behalf, subject only to final approval of the board, but, of course, guided by the board's initial instructions, this person can become an expert in the field through study, attendance at conferences and experience. Of greater importance if the person is carefully selected by the board, he can establish sound liaison and rapport with the teacher's representatives on a continuing basis from year to year.[18]

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[18]Professional Consultation and the Determinants of Compensation for Ontario Teachers (Toronto: Ministry of Government Services, 1972), p.54.

16. A Final Note

In this report, we have made recommendations that certain concepts, principles and/or procedures currently in Bill 100 be continued, that others be amended or deleted and that still others be added in an amended Bill 100.

There are also some concepts, principles and/or procedures embodied in the current Bill 100 about which we have made no direct comment in this report. In such instances it should be assumed that the Commission believes that those concepts, principles and/or procedures should be continued in an amended Bill 100, except as they may require amendment to eliminate conflict with the specific recommendations contained in this report.

H. LIST OF RECOMMENDATIONS

Recommendation #1 Page 19

The Commission recommends that teachers and boards should continue to negotiate under an amended version of Bill 100.

Recommendation #2 Page 22

The Commission recommends that the right to strike continue to be provided in an amended Bill 100.

Recommendation #3 Page 30

The Commission recommends that Bill 100 be amended to provide that boards have the right to impose full or partial lock-outs at the same time, and under the same conditions, as teachers have the right to strike.

Recommendation #4 Page 31

The Commission recommends that partial withdrawal of services continue to be permitted as a strike under Bill 100.

Recommendation #5 Page 34

The Commission recommends that Bill 100 be amended to allow boards the right to change the terms and conditions of employment of teachers at the same time, and under the same conditions, that teachers acquire the right to strike.

Recommendation #6 Page 35

The Commission recommends that there be no statutory obstacles to prevent a board from attempting to operate its schools when its teachers are on strike.

Recommendation #7 Page 36

The Commission recommends that Bill 100 be amended to provide that under the supervision of the Education Relations Commission a vote by a board in open session on the teachers' "last demand" must be held before a vote to lock out or change terms and conditions of employment may be taken and that the vote to lock out or change terms and conditions of employment must be taken within five days of the "last-demand" vote, otherwise a "new" last-demand vote must be held.

Recommendation #8 Page 36

The Commission recommends that Bill 100 be amended to provide that the strike vote must be held within five days of the last-offer vote by the branch affiliate, otherwise a "new" last-offer vote must be held.

Recommendation #9 Page 37

The Commission recommends that Bill 100 be amended to provide that the Education Relations Commission shall advise the Lieutenant Governor in Council when it judges that an unresolvable impasse has been reached and/or the continuance of a strike or lock-out will place in jeopardy the successful completion of courses of study by the students.

Recommendation #10 Page 37

The Commission recommends that Bill 100 be amended to provide that in the event that a strike or lock-out is to be terminated, the Education Relations Commission shall have the power to recommend to the Lieutenant Governor in Council the length of the agreement to be established, as well as the method to be used to settle the dispute, for example: final-offer selection, or arbitration or any other procedure.

Recommendation #11 Page 38

The Commission recommends that Bill 100 be amended to provide the Education Relations Commission with the authority to use a variety of strategies in assisting the parties to reach an agreement and/or to improve their relationship.

Recommendation #12 Page 41

The Commission recommends that the requirement in Bill 100 that principals and vice-principals be members of the bargaining units be retained.

Recommendation #13 Page 41

The Commission recommends that Bill 100 be amended to provide that principals only be denied the right to strike.

Recommendation #14 Page 41

The Commission recommends that The Education Act, 1974 and its Regulations be amended to define more precisely the duties of a principal, and especially those duties during a strike.

Recommendation #15 Page 41

The Commission recommends that the Minister maintain a watching brief to ensure that principals are allowed to perform their duties without undue interference from the teachers' federations.

Recommendation #16 Page 47

The Commission recommends that Bill 100 be amended to provide for the inclusion in the bargaining units of occasional (referred to later as "limited term" and "supply"), night school and summer school credit course teachers.

Recommendation #17 Page 49

The Commission recommends that teachers in junior high schools and in the schools for trainable retarded children, and coordinators and consultants, belong to the bargaining unit which is consistent with the affiliate of the federation in which they have membership and to which they pay fees.

Recommendation #18 Page 49

The Commission recommends that Bill 100 continue to provide for voluntary joint bargaining by branch affiliates and/or by school boards, subject to adjudication by the Education Relations Commission as recommended in Recommendation #19.

Recommendation #19 Page 52

The Commission recommends that Bill 100 be amended to provide that the Education Relations Commission have the authority to adjudicate disputes pertaining to the appropriateness of bargaining units and joint bargaining.

Recommendation #20 Page 53

The Commission recommends that province-wide bargaining by teachers' federations or school boards not be allowed under an amended Bill 100.

Recommendation #21 Page 56

The Commission recommends that individual teacher contracts be continued but that there be several amended forms of teacher contracts as follows:

(a) Probationary Teacher's Contract as currently provided under The Education Act, 1974, but that section 52 of Bill 100 be amended to make it clear that the terms and conditions in the Probationary Teacher's Contract may not be amended by a collective agreement;

(b) Teacher's Contract, replacing the Permanent Teacher's Contract, which will contain the commitment of the teacher to hold the qualifications and to perform the duties specified under The Education Act, 1974 (sections 2 and 3 of the current Permanent Teacher's Contract) and the beginning date of the contract. Provisions for the termination of a Teacher's Contract should be negotiated in collective agreements;

(c) Limited Term Teacher's Contract for qualified teachers engaged for a period of one month to twelve calendar months, specifying the beginning and ending dates; and

(d) Supply Teacher's Letter of Appointment for qualified teachers engaged for a period of less than one month in any school year.

Recommendation #22 Page 56

The Commission further recommends that The Education Act, 1974 and its Regulations be amended to remove all other provisions that relate to teacher contracts, including the statutory number of professional development days, statutory sick leave allowance and the statutory provision of a Board of Reference, and that section 228 of The Education Act, 1974, which provides that either party may apply to the Minister for authority to terminate a contract, be removed.

Recommendation #23 Page 57

The Commission further recommends that The Education Act, 1974 be amended to allow a board to suspend for cause without pay for a definite period, and/or terminate any of the contracts recommended above, subject to the right of the individual involved to grieve under the appropriate collective agreement.

Recommendation #24 Page 61

The Commission recommends that Bill 100 continue to provide that negotiations shall be carried out in respect of any term or condition of employment put forward by either party.

Recommendation #25 Page 66

The Commission recommends that provision for mediation of disputes continue to be provided under Bill 100.

Recommendation #26 Page 66

The Commission also recommends that Bill 100 be amended to make it clear to the parties that the Education Relations Commission has the authority to send in, at any time, a "strike-mediation team" which may, if required by the Education Relations Commission, make public recommendations, including recommendations on the terms of settlement.

Recommendation #27 Page 67

The Commission recommends that provisions for fact finders remain in Bill 100 but be amended to provide,

(a) that fact finding may be requested by either party at any time after 75 days from the date of notice to negotiate and that the Education Relations Commission shall appoint a fact finder as soon as possible;

(b) that in the absence of a request to do so by either party, the Education Relations Commission may appoint a fact finder at any time (as now in Bill 100) and that if no agreement is reached by November 1 following the end of the previous contract the Education Relations Commission shall appoint a fact finder as soon as possible;

(c) that the fact finder should make recommendations for settlement of all matters remaining in dispute, and that the Education Relations Commission has authority to require the fact finder to do so;

(d) that when the fact finder's report is published, the recommendations may be released at the discretion of the Education Relations Commission;

(e) that section 27(3) of Bill 100 clarify that if agreement is reached during the five-day deferral of the release of the report to the public, the report shall not be released by the Education Relations Commission, by either of the parties or by any other person; and

(f) that the parties may resume negotiations prior to the release of the fact finder's report.

Recommendation #28 Page 72

The Commission recommends that Bill 100 continue to provide for voluntary arbitration as one means of concluding negotiations and that Bill 100 be amended (1) to allow the parties to design and use any form of arbitration which they believe is suitable and desirable in the particular circumstances, (2) to provide that the government, through the Education Relations Commission, pay the fees of an arbitrator if both parties in a negotiation voluntarily agree to arbitration and that in such instances the Education Relations Commission shall set the fees and allowable expenses.

Recommendation #29 Page 73

The Commission recommends that Bill 100 continue to provide for final-offer selection as one means of concluding negotiations and that Bill 100 be amended (1) to provide that neither party having agreed to the proceedings shall withdraw from them, (2) to provide guidance to the selector in distributing the award, (3) to allow the parties to design and use any form of final-offer selection which they believe is suitable and desirable in the particular circumstances, and (4) to provide that the government, through the Education Relations Commission, pay the fees of a selector if both parties in a negotiation voluntarily agree to final-offer selection and that in such instances the Education Relations Commission shall set the fees and allowable expenses.

Recommendation #30 Page 77

The Commission recommends that Bill 100 provide the option for the parties, by mutual agreement, to choose a non-sanction route and to waive their rights to strike and lock-out.

Recommendation #31 Page 79

The Commission recommends that the Education Relations Commission provide for the establishment of a panel of highly qualified arbitrators and selectors.

Recommendation #32 Page 80

The Commission recommends that Bill 100 be amended to provide a more extensive list of criteria to be considered by fact finders, arbitrators and selectors in making these awards.

Recommendation #33 Page 81

The Commission recommends that Bill 100 be amended to provide that persons appointed as mediators, final-offer selectors, fact finders or arbitrators shall have no pecuniary interest in the matters coming before them, and are not acting, or have not acted on behalf of either party within six months immediately before the date of appointments, unless both parties agree to waive this requirement.

Recommendation #34 Page 81

The Commission recommends that Bill 100 be amended to provide that mediators, fact finders, arbitrators and selectors have the authority to set dates for hearings, and enforce adherence by the parties to reasonable timelines.

Recommendation #35 Page 83

The Commission recommends that Bill 100 be amended to provide,

(a) that notice to negotiate must be given within the month of February of the year in which the existing agreement expires;

(b) that negotiations shall begin within fifteen days of the giving of notice;

(c) that within 30 days of notice, each party must present to the other party, in writing, all of the items on which it wishes to negotiate, together with a detailed justification of the changes requested, item by item;

(d) that after 30 days of notice, either party may request a mediator, and the Education Relations Commission, at its discretion, may appoint;

(e) that 75 days or more after notice, either party may request a fact finder and the Education Relations Commission shall appoint a fact finder as soon as possible; and

(f) that 15 days after the fact finder's report has been made public, but not earlier than September 1, "last-demand" and "last-offer" and strike or lock-out votes may be called by either party.

Recommendation #36 Page 88

The Commission recommends that the grievance procedure set out in Bill 100, section 53, be amended to include the following:

(a) that both parties should be required to file written briefs with the arbitrator in advance of the hearing date;

(b) that the arbitrator should have the authority to determine whether a matter is arbitrable; and

(c) that each of the parties should pay one-half of the fees and expenses of the person appointed, and such fees and expenses should be paid within 60 days after the issuance of the decision by the arbitrator.

Recommendation #37 Page 89

The Commission recommends that the grievance procedure set out in section 53, or any alternative grievance procedure negotiated by the parties, must require,

(a) that arbitrators or boards of arbitration have powers similar to those granted under sections 37(7) and 37(8) of The Ontario Labour Relations Act; and

(b) that each party, and the arbitrator or board of arbitration, file a copy of the decision with the Education Relations Commission.

Recommendation #38 Page 90

The Commission recommends that Bill 100 continue to contain a good-faith requirement, but that this requirement be limited to an obligation to meet and exchange positions and to cooperate with authorized third-party intervenors.

Recommendation #39 Page 91

The Commission recommends that Bill 100 be amended to include a section containing some of the provisions of the "unfair practices" section of The Ontario Labour Relations Act.

Recommendation #40 Page 93

The Commission recommends that Bill 100 be amended to include a "duty of fair representation" clause, and to empower the Education Relations Commission to adjudicate alleged violations.

Recommendation #41 Page 95

The Commission recommends that Bill 100 be amended to include a Bill of Rights for teachers as members of the teacher federations.

Recommendation #42 Page 98

The Commission recommends that the Education Relations Commission be given sufficient resources to pay mediators, fact finders and arbitrators and final-offer selectors at levels which will ensure the selection and retention of qualified individuals, and that the Education Relations Commission provide more training workshops for such persons.

Recommendation #43 Page 98

The Commission recommends that the Education Relations Commission develop training workshops for grievance arbitrators, and investigate the feasibility of employing grievance-settlement officers.

Recommendation #44 Page 99

The Commission recommends that section 62 of Bill 100 be amended so that it is indentical to section 58 of The Colleges Collective Bargaining Act, 1975.

Recommendation #45 Page 99

The Commission recommends that section 61(2) of Bill 100 be amended to provide that the Education Relations Commission may request a board or an affiliate to provide the information necessary for the Education Relations Commission to carry out its duties under Bill 100.

Recommendation #46 Page 99

The Commission recommends that the Education Relations Commission continue to provide bilingual services, and that the necessary moneys be allocated for this purpose.

Recommendation #47 Page 101

The Commission recommends that sections 7(1), (2), (3), and (4), section 12(2) and sections 51(2) and (3) be deleted from Bill 100, that all references to "written collective understandings" be removed from Bill 100 except for section 1 (p), and that a new section 51(2) be written as follows: "A written collective understanding shall be deemed to be an agreement under Bill 100."

Recommendation #48 Page 101

The Commission recommends that section 63 of Bill 100 be rewritten as follows: "The moneys required for the purposes of the Education Relations Commission shall be paid out of the moneys appropriated therefor by the Legislature."

Recommendation #49 Page 101

The Commission recommends that the phrase "in effect" be used in lieu of the phrases "in force" and "in operation".

APPENDIX I

O.C.2850/79

Copy of an Order-in-Council approved by Her Honour the Lieutenant Governor, dated the 24th day of October, A.D. 1979.

The Committee of Council have had under consideration her report of the Honourable the Minister of Education, wherein she states that,

WHEREAS clause b of section 9 of The Education Act, 1974 authorizes the Minister of Education to appoint as a commission one or more persons, as the Minister considers expedient, to inquire into and report upon any school matter, and

WHEREAS The School Boards and Teachers Collective Negotiations Act, 1975 has been in force since July 18, 1975, and

WHEREAS it is desirable that a review be conducted of the functioning of the collective bargaining process established by that Act, and

WHEREAS it is expedient that a commission be appointed to conduct such a review and to make recommendations to the Minister of Education in respect of the collective bargaining process for teachers established under that Act and to inquire into and make recommendations in respect of other methods of negotiating the remuneration and conditions of employment of teachers;

The Honourable the Minister of Education therefore recommends that Dr. B. C. Matthews, president of the University of Waterloo, Dr. R. Fraser of Queen's University at Kingston and Dr. J. Crispo of the University of Toronto be appointed as a commission to be known as the Commission to Review the Collective Negotiation process Between Teachers and School Boards to inquire into and report upon the process by which collective negotiations between teachers and school boards are presently conducted and upon alternatives thereto, and that Dr. B. C. Matthews be named chairman of the said Commission.

Upon the completion of its inquiry, the Commission shall recommend measures that the government should consider in relation to collective negotiations for teachers employed in elementary and secondary schools, having in mind the general public good and the rights of teachers to just and equitable remuneration and conditions of employment and include in the report a response to the following specific issues:

(1) whether negotiations between school boards and teachers should continue on the basis now provided under The School Boards and Teachers Collective Negotiations Act, 1975 and, if so, what changes, if any, should be made to facilitate the operation of the collective bargaining process in the light of experience to date;

(2) whether negotiations should be conducted on some other basis, including province-wide or regional negotiations and, if such negotiations are recommended,

(a) who should be the parties to the negotiations,

(b) the manner in which the negotiation process should be carried out, and

(c) which matters should continue to be negotiated locally;

(3) whether elementary and secondary school teachers employed by a board of education should negotiate separately or together;

(4) what restrictions, if any, should be placed by legislation on the items that may be included in collective agreements between school boards and teachers;

(5) whether the sanctions available under The School Boards and Teachers Collective Negotiations Act, 1975 should be defined in greater detail;

The Commission shall also consider and make recommendations as to what relationship should obtain between the collective agreement and the individual teacher's contract.

The Commission, in carrying out its terms of reference shall,

(a) take into consideration the results of the Ministry of Education's internal review of the Act;

(b) invite and take into consideration written submissions and oral presentations related thereto from,

(i) The Ontario School Trustees' Council and its member associations,

(ii) The Ontario Teachers' Federation and its affiliated bodies,

(iii) the Education Relations Commission,

(iv) officials and others who have been involved in collective negotiations between teachers and school boards, and

(v) other individuals or organizations the Commission feels may facilitate its work and may, for this purpose, hold meetings in Toronto and in one location in each of the Ministry of Education administrative regions;

(c) prepare and submit to the Minister of Education for approval within four weeks of the appointment of the Commission a plan of action that shall include,

(i) a list of the detailed tasks to be undertaken and a schedule for their completion, and

(ii) a detailed budget with special reference to staffing, salaries, services such as recording and transcription, travel costs and special facilities requested, and the members of the Commission shall be responsible for ensuring that the budget approved by the Minister is not exceeded.

The Honourable the Minister of Education further recommends that W. C. VanderBurgh be appointed to act as secretary to the Commission, and that the Education Relations Commission be requested to provide to this Commission the services of a research specialist and such information and materials as it has available and that is required by this Commission.

And the Honourable the Minister of Education further recommends that this Commission be required to report as soon as practicable and not later than the 31st day of March, 1980, and that this Commission be dissolved on the date of the submission of its final report.

The Committee of Council concur in the recommendations of the Honourable the Minister of Education, and advise that the same be acted on.

Certified,

R. A. Farrell (signed)

Deputy Clerk, Executive Council.

APPENDIX I

O.C.24/80

Copy of an Order-in-Council approved by Her Honour the Lieutenant Governor, dated the 2nd day of January, A.D. 1980.

The Committee of Council have had under consideration the report of the Honourable the Minister of Education, wherein she states that,

WHEREAS by Order-in-Council number OC-2850/79 a Commission to Review the Collective Negotiations Process Between Teachers and School Boards was appointed;

AND WHEREAS it is desirable to amend the terms of reference of the Commission in respect of two of the specific issues upon which the Commission is to report and to extend somewhat the date by which the Commission is required to report;

The Honourable the Minister of Education therefore recommends that the said Order-in-Council numbered OC-2850/79 be amended by striking out the paragraphs number (2) and (5) and inserting in lieu thereof the following:

(2) whether negotiations should be conducted on some other basis, and, if such negotiations are recommended,

(a) who should be the parties to the negotiations, and

(b) the manner in which the negotiation process should be carried out;

(5) whether the sanctions available under The School Boards and Teachers Collective Negotiations Act, 1975 are appropriate or whether they should be defined in greater detail.

The Honourable the Minister of Education further recommends that the said Order-in-Council number OC-2850/79 be further amended by striking out "31st day of March, 1980" in the penultimate paragraph of the Order-in-Council and inserting in lieu thereof "1st day of May, 1980".

The Committee of Council concur in the recommendations of the Honourable the Minister of Education and advise that the same be acted on.

Certified,

R. A. Farrell (signed)

Deputy Clerk, Executive Council.

APPENDIX II

A COMMISSION TO REVIEW
THE COLLECTIVE NEGOTIATION PROCESS
BETWEEN TEACHERS AND SCHOOL BOARDS

Invitation for Briefs

By order-in-Council, a Commission was established to review the collective negotiation process between teachers and school boards under The School Boards and Teachers Collective Negotiations Act, 1975 (Bill 100).

Accordingly, the Commission invited briefs from teachers, school boards and members of the public on the operation of the collective negotiation process between teachers and school boards.

Written briefs will be received until January 31, 1980, by the Commission and public hearings will be held in Toronto, Thunder Bay, Sudbury, North Bay, London and Ottawa, at locations and on dates to be specified.

Organizations and individuals contemplating the submission of briefs should request further information regarding the issues on which opinions are sought from the Secretary of the Commission. Briefs should be sent to the Commission, 12th Floor, 1200 Bay Street, Toronto, M5R 2A6, 965-5064.

Dr. B. C. Matthews,
Chairman

W. C. VanderBurgh,
Secretary

(Advertisement on December 17, 1979)

APPENDIX II

A COMMISSION TO REVIEW
THE COLLECTIVE NEGOTIATION
PROCESS BETWEEN
TEACHERS AND SCHOOL BOARDS

NOTICE OF HEARINGS

The Commission has scheduled public hearings in Toronto as follows:

Macdonald Block, Queen's Park, Bay and Wellesley Streets. 9:00 A.M. to 6:00 P.M.

March 5, 6 and 7	Huron Room
March 12	Ontario Room South
March 13 (Adjourn 3:30 P.M.)	Ontario Room South
April 8	Huron Room

Other hearings in Ottawa, London, Thunder Bay, Sudbury and North Bay have been scheduled as follows beginning at 9:00 A.M.:

March 14	Ottawa	High School of Commerce Lecture Room 300 Rochester Street Ottawa, Ontario
March 19	London	London Board of Education 165 Elmwood Avenue London, Ontario
March 21	Thunder Bay	Fort William Collegiate Institute 512 South Marks Street Thunder Bay, Ontario
March 25	Sudbury	The Council Chambers Civic Square 200 Brady Street Sudbury, Ontario
April 2	North Bay	The Council Chambers North Bay City Hall 200 McIntyre Street East North Bay, Ontario

Appointments have been arranged and advice has been sent to those invited to submit briefs.

Opportunity will be given to those not already scheduled to appear before the Commission to present their views at each of the hearings. For further information, including the agenda for the hearings, please get in touch with the Commission, 12th Floor, 1200 Bay Street, Toronto, M5R 2A6, telephone (416) 965-5064.

W. C. VanderBurgh
Secretary

B. C. Matthews
Chairman

(Advertisement on February 27, 1980)

APPENDIX II

NEWSPAPERS IN WHICH ADVERTISEMENTS APPEARED

1. HAMILTON SPECTATOR
2. KINGSTON-WHIG STANDARD
3. KITCHENER WATERLOO RECORD
4. LONDON FREE PRESS
5. NORTH BAY NUGGET
6. OTTAWA CITIZEN
7. OTTAWA JOURNAL
8. OWEN SOUND SUN TIMES
9. ST. CATHARINES STANDARD
10. THE SUDBURY STAR
11. THUNDER BAY TIMES NEWS CHRONICLE
12. TORONTO GLOBE AND MAIL
13. TORONTO STAR
14. TORONTO SUN
15. WINDSOR STAR

APPENDIX III

INFORMATION REGARDING BRIEFS

On October 30, 1979, the Honourable Bette Stephenson, M.D., announced the establishment of a Commission under Section 9 of The Education Act, 1974, to review the collective negotiation process between teachers and school boards.

The following Commissioners were appointed:

Dr. B. C. Mathews — Chairman
President
University of Waterloo

Dr. John Crispo — Commissioner
Faculty of Management Studies
University of Toronto

Dr. Roderick Fraser — Commissioner
Department of Economics
Queen's University

The Terms of Reference for the Commission Are As Follows:

"On completion of their review and inquiry, the Commission shall recommend measures that the government should consider in relation to collective negotiations for teachers employed in elementary and secondary schools, having in mind the general public good and the rights of teachers to just and equitable remuneration and conditions of employment and include in the report a response to the following specific issues:

1) Whether negotiations between school boards and teachers should continue on the basis now provided under The School Boards and Teachers Collective Negotiations Act, 1975 and, if so, what changes, if any, should be made to facilitate the operation of the collective bargaining process in the light of experience to date;

2) Whether negotiations should be conducted on some other basis, and, if such other bases are recommended,

   A) Who should be the parties to the negotiations, and
   B) The manner in which the negotiation process should be carried out.

3) Whether elementary and secondary school teachers employed by a board of education should negotiate separately or together;

4) What restrictions, if any, should be placed by legislation on the items that may be included in collective agreements between school boards and teachers;

5) Whether the sanctions available under The School Boards and Teachers Collective Negotiations Act, 1975, are appropriate or whether they should be defined in greater detail.

"The Commission shall also consider and make rcommendations as to what relationship should exist between the collective agreement and the individual teacher's contract."

The Commission invites briefs on the issues set out in the terms of reference. In particular, the Commission welcomes briefs which describe experience with, evaluations of, and where considered appropriate, suggestions for improvements in the negotiation procedures provided for under The School Boards and Teachers Collective Negotiations Act, 1975. This would include, but not be limited to, discussions involving any, or all, of the following topics:

- the status of principals and vice-principals vis à vis the bargaining unit;
- the status of individual teachers within the bargaining process, i.e., the duty of fair representation;
- the composition of the bargaining unit by area, i.e., regional, and level, i.e., elementary and secondary;
- joint bargaining by separate bargaining units;
- the composition and experience of different types of negotiating committees, including in relation thereto, the role of the chief executive officer of the board, trustees, teachers and the representatives of their various respective organizations;
- the scope of bargaining, i.e., items to be included;
- the time limits for negotiations and various stages thereof;
- forms of third-party assistance including mediation, fact finding, arbitration, and final-offer selection;
- criteria employed by fact finders, arbitrators and final-offer selectors;
- strikes, lock-outs, work to rule and other sanctions: their impact on teachers, boards, students, parents, etc.;
- any innovative bargaining procedures that parties have adopted to further harmonious relations between school boards and teachers.

Briefs, in ten copies, should be forwarded to the Secretary of the Commission by January 31, 1980.

Appointments for hearings will be arranged for those invited to submit briefs. Appointments for hearings may be arranged at the discretion of the Commission for other individuals or organizations that submit briefs.

Hearings will be scheduled between February 14 and March 15, 1980, at locations to be specified.

W. C. VanderBurgh
Secretary
December 5, 1979

APPENDIX IV

BRIEFS

A. Ministry of Education

1. Internal Review of The School Boards and Teachers Collective Negotiations Act, 1974

B. Provincial Trustee Associations

* 2. L'Association Francaise des Conseils Scolaires de L'Ontario
* 3. Northern Ontario Public and Secondary School Trustees' Association
* 4. Ontario Public School Trustees' Association
* 5. Ontario School Trustees' Council
* 6. Ontario Separate School Trustees' Association

C. Local School Boards

* 7. Bruce County Board of Education
* 8. Carleton Roman Catholic Separate School Board
9. Cochrane-Iroquois Falls Roman Catholic Separate School Board
10. Essex County Board of Education
* 11. Fort Frances-Rainy River Board of Education
* 12. Frontenac-Lennox and Addington County Roman Catholic Separate School Board
13. Haliburton County Board of Education
* 14. Hastings-Prince Edward County Roman Catholic Separate School Board
* 15. Kirkland Lake Board of Education
* 16. Lakehead Board of Education
* 17. Lambton County Board of Education
18. Lanark County Board of Education
19. Lincoln County Roman Catholic Separate School Board
* 20. London, Board of Education for the City of
21. London and Middlesex County Roman Catholic Separate School Board
* 22. Metropolitan Toronto School Board
* 23. Nipissing Board of Education
24. Northumberland and Newcastle Board of Education
* 25. North York Board of Education
* 26. Ottawa Board of Education
* 27. Ottawa Roman Catholic Separate School Board
* 28. Peel Board of Education
29. Prescott and Russell County Roman Catholic Separate School Board
* 30. Renfrew County Board of Education
* 31. Sault Ste. Marie Board of Education
32. Scarborough Board of Education
* 33. Sudbury District Roman Catholic Separate School Board
* 34. Timiskaming Board of Education
35. Toronto, Board of Education for The City of
36. Wentworth County Board of Education
* 37. York, Board of Education for The Borough of
* 38. York County Board of Education

APPENDIX IV

D. Provincial Teacher Associations

* 39. Association des Enseignants Franco-Ontariens
* 40. Federation of Women Teachers' Associations of Ontario
* 41. Federation of Provincial School Authority Teachers
* 42. Ontario English Catholic Teachers' Association
* 43. Ontario Principals' Association
* 44. Ontario Public School Men Teachers' Federation
* 45. Ontario Secondary School Teachers' Federation
* 46. Ontario Teachers' Federation

E. Local Branch Affiliates and Teacher Associations

* 47. Carleton Teachers' Federation (Elementary)
  48. Carleton Unit, OECTA
  49. Etobicoke District, OPSMTF
  50. Frontenac, Lennox and Addington Unit, OECTA
  51. Grey County Teachers' Association (Elementary)
* 52. Hamilton Teachers' Federation (Elementary)
  53. Huron-Perth Unit, OECTA
  54. Kent County Unit, OECTA
  55. Lambton Unit, OECTA
  56. London Middlesex Unit, OECTA
  57. Metropolitan Toronto District, OPSMTF
  58. North York District, OPSMTF
* 59. Ottawa District (Elementary)
* 60. Ottawa District, OSSTF
  61. Renfrew Unit, OECTA
* 62. Scarborough District, OSSTF
  63. Timiskaming Unit, OECTA
  64. Windsor Unit, OECTA
  65. York County, OSSTF

F. Other Organizations

  66. Advisory Committee, Broadview Public School, Ottawa
* 67. Board of Trade Metropolitan Toronto
* 68. Bowman, S. and Associates Inc.
* 69. Carleton Home and School Council
* 70. Citizens for Educational Rights of Children, Peel County
* 71. Directors of Education, Eastern Ontario Region
* 72. Education Relations Commission
* 73. Federation of Catholic Parent-Teacher Associations of Ontario
  74. Group of Concerned Sudbury Parents
  75. Metropolitan Association of Supply Teachers
* 76. Northern Collegiate Students' Council
  77. North York Council of Student Presidents
* 78. North York Education and Community Council (EDUCOM)
* 79. Ontario Association of Education Administrative Officials and Ontario Association of School Business Officials
* 80. Ontario Catholic Supervisory Officers' Association
* 81. Ontario Federation of Home and School Associations
* 82. Ontario Public Service Employees Union
* 83. Ontario Secondary School Students' Association
* 84. Organized Working Women
* 85. Peel Association of Supply Teachers

APPENDIX IV

F. Other Organizations - Continued

* 86. People and Organizations in North Toronto (POINT)
87. Sarnia District Chamber of Commerce
88. Sinclair, A. Associates, Educational and Business Consultants
* 89. Sudbury Local Ratepayers
* 90. Sudbury Presbytery, United Church of Canada
* 91. Thomas L. Kennedy Secondary School, Peel County, Group of Teachers

G. Individuals

92. Armstrong, Ivan
93. Blackburn, Derek
94. Bradley, Robert
95. Carroll, Mrs. Robert
* 96. Checkeris, Ernie
* 97. Clark, Mrs. Rosamond
* 98. Cole, Michael
99. Creed, John D.
100. Creed, Mrs. Donna
*101. Crossman, Tom.
102. Divitt, G.
103. Gibson, Mr. and Mrs. W. J.
104. Gracy, Mrs. Donna
105. Gregus, John
106. Harris, Gail
107. Hartel, H.
*108. Hebert, Larry
*109. Hennessy, Peter
110. Johnson, Paul
111. King, Mrs. Joan
112. Kujala, Mrs. R.
113. McCraken, Ronald
114. MacKinnon, Mrs. Janet
*115. MacLeod, Walter J.
116. Maddock, F.
117. Marcotte, Dr. W.
118. Meretsky, Mrs. E.
119. Millar, James
120. Milne, Allan
121. Moga, Miss C.
122. Moggy, Mrs. J.
123. Noel, Elizabeth
124. Paterson, R.
125. Pezzutto, Mrs. L.
126. Puerston, Mr. Wolfgang, and Mrs. Wilhelmena, Michael and Andrew Puerston
127. Ramautarsingh, Tom
128. Robertson, Mrs. Carol
129. Ruse, Edward
130. Shabusive, Mrs. Marsha
131. Smith, Joseph
132. Smith, Mrs. R.
*133. Spencley, Barry
*134. Strong, Stella
135. Thornton, Caroline

G. Individuals - Continued

136. Townsend, M. L.
137. Wardill, Mrs. M. (and other concerned Sudbury parents)
138. Wingfelder, Joseph
139. Young, Mrs. Daphne

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* Briefs presented at public hearings.

SUMMARY OF INFORMATION CONCERNING STRIKE ACTION, LOCK-OUTS AND SCHOOL CLOSINGS BY BRANCH AFFILIATES AND BOARDS OF EDUCATION 1975-80

APPENDIX V

BOARD	NUMBER OF SCHOOLS	NUMBER OF TEACHERS IN BRANCH AFFILIATE	NUMBER OF STUDENTS AFFECTED	SANCTIONS BY BRANCH AFFILIATES	SANCTIONS BY BOARD	DURATION OF SANCTION*
1975-76						
Central Algoma	1	39	666.5	Withdrawal of services		Feb. 16/76 to Apr. 12/76 (35 days)
Kent County	11	464.6	8 392	Withdrawal of services, work to rule, rotating school strike	Lock-out, alteration of terms & conditions of employment	Dec. 8/75 to Mar.28/76 (4 days total withdrawal of services, 8 days lock-out, 53 days work to rule, 16 days rotating school strike)
Kirkland Lake	1	93.5	1 730	Withdrawal of services		Jan. 12/76 to Mar. 12/76 (44 days)
Metropolitan Toronto						
East York	8	287.3	4 903	Withdrawal of services		Nov. 12/75 to Jan. 16/76 (38 days)
Etobicoke	20	1 284.8	22 153	Withdrawal of services	Lock-out	
North York	51	2 342	35 788	Withdrawal of services		
Scarborough	22	1 803	30 713	Withdrawal of services		
Toronto	36	2 224	33 638	Withdrawal of services		
York Borough	7	518	8 484	Withdrawal of services	Lock-out	
Sault Ste. Marie	7	393.5	6 942	Rotating strike, withdrawal of services, work to rule	Lock-out, alteration of terms & conditions of employment, closing of six schools	Feb. 5/76 to 15/76 (11 days withdrawal of services, 2 days closing of 6 out of 7 schools, 33 days work to rule)
Windsor	12	746	12 400	Withdrawal of services, work to rule	Lock-out	Mar. 30/76 to May 7/76 (1 day work to rule, 1 day withdrawal of services, 26 days withdrawal of services and lock-out)

APPENDIX V

BOARD	NUMBER OF SCHOOLS	NUMBER OF TEACHERS IN BRANCH AFFILIATE	NUMBER OF STUDENTS AFFECTED	SANCTIONS BY BRANCH AFFILIATES	SANCTIONS BY BOARD	DURATION OF SANCTION*
1976-77						
Durham Region RCSS	27	456	8 675	Withdrawal of services		Jan. 31-Feb. 10/77 (9 instruct. days)
Peel Secondary	22	1 797	28 640	Work to rule		Feb. 15-Apr. 26/77 (44 instruct. days)
Stormont, Dundas & Glengarry County Secondary	10	552	9 107	Withdrawal of services		Apr. 4-May 9/77 (24 instruct. days)
1977-78						
Essex County RCSS	27	517	10 217	Withdrawal of services	Closing of schools	Jan. 10-Feb. 26/78 Jan. 10-Feb. 26/78 (34 instructional days affected)
Essex County Secondary	8	569	8 374	Withdrawal of services		May 8-30/78 (16 instructional days affected)
Huron County Secondary	5	263.5	4 521	Rotating school strike Withdrawal of services	Lock-out	Feb. 15-17/78 Feb. 23-Mar. 27/78 Feb. 21-Apr. 12/78 (31 instructional days affected)

APPENDIX V

BOARD	NUMBER OF SCHOOLS	NUMBER OF TEACHERS IN BRANCH AFFILIATE	NUMBER OF STUDENTS AFFECTED	SANCTIONS BY BRANCH AFFILIATES	SANCTIONS BY BOARD	DURATION OF SANCTION*
(1977-78 - continued)						
Perth County Secondary	5	308	5 479	Work to rule		Feb. 23-May 3/78 (41 instructional days affected)
Renfrew County Secondary	7	441	7 698	Work to rule		Jan. 30-Mar. 10/78
				Withdrawal of services	Lock-out	Mar. 11-Apr. 16/78 Mar. 3, Apr. 17-May 18, 1978 (73 instructional days affected)
Wentworth County Secondary	8	434	7 511	Work to rule		Mar. 9-May 3/78
					Lock-out	May 4-28/78 (49 instructional days affected)
1978-79						
Haldimand Secondary	4	180	2 899	Withdrawal of services		Mar. 29/79-May 22/79 (36 instructional days)
Kirkland Lake Secondary	1	86	1 429	Work to rule		May 15-21/79
					Lock-out	May 22-June 26/79 (4 and 26 instructional days respectively)
York County Secondary	15	968	16 274	Work to rule		Sept. 1-6/79
					Closing of schools	Sept. 5-6/79 (3 instructional days work to rule; 2 instructional days closing of schools)

APPENDIX V

BOARD	NUMBER OF SCHOOLS	NUMBER OF TEACHERS IN BRANCH AFFILIATE	NUMBER OF STUDENTS AFFECTED	SANCTIONS BY BRANCH AFFILIATES	SANCTIONS BY BOARD	DURATION OF SANCTION*
1979-80						
Peel Elementary	123	2 533	51 749	Withdrawal of services Work to rule		Oct. 2-21/79 Oct. 22/79 (13 instructional days withdrawal of services; 1 day work to rule)
North York Secondary	50	2 407	33 427	Work to rule		Oct. 29-Dec. 21/79 (40 instructional days)
Brant County Elementary	41	566	11 078	Withdrawal of services		Nov. 14-Dec. 13/79 (22 instructional days)
Lambton County Secondary	8	493	8 455	Withdrawal of services		Jan. 29/80-Mar. 30/80 (39 instructional days)
Sudbury Secondary	17	870	13 526	Withdrawal of services		Feb. 6/80-May 4/80 (56 instructional days)
Frontenac RCSS	16	234	4 576	Withdrawal of services		Feb. 20/80-Mar. 10/80 (14 instructional days)
Nipissing RCSS	35	430	7 539	Withdrawal of services		April 30 -

*The "Duration of Sanction" includes weekends and any scheduled school holidays. The term "instructional days" refers to actual days affected by the sanction.
Source: Education Relations Commission.

APPENDIX VI

DUTIES OF PRINCIPALS

Ontario Regulation 704/78 under The Education Act, 1974 sets out the management functions of the principal as follows:

12.-(1) The principal of a school is in charge of the management and discipline of the school and, subject to the approval of the appropriate supervisory officer, is in charge of the organization of the school.

(2) In addition to his duties under the Act, the principal of a school shall,

(a) supervise the instruction in the school and advise and assist any teacher, in co-operation with the teachers in charge of the organizational unit or program in which the teacher teaches;

(b) make allowance in the timetable for duties required of teachers in charge of organizational units or programs and for special duties required of any teacher;

(c) assign duties to vice-principals and to teachers in charge of organizational units or programs;

(d) hold meetings of the teachers to discuss matters relating to management and organization of the school;

(e) make recommendations to his board respecting any additions or alterations that he considers necessary to the school building;

(f) inspect the school premises regularly and report promptly to his board,

(i) any repairs to the school that are required, and,

(ii) any lack of attention on the part of the building maintenance staff of the school;

(g) instruct pupils in the care of the school premises;

(h) make provision for adequate supervision during the period determined by his board under subsection 8 of section 3, and for the supervising and conducting of any other school activity authorized by his board;

(i) exercise control over the amount of homework assigned to pupils;

(j) assign suitable quarters for pupils to eat lunch;

(k) report to his board in writing, on its request, on the effectiveness of members of the teaching staff;

(l) recommend to his board,

(i) the appointment and promotion of teachers, and

(ii) the demotion or dismissal of a teacher whose work or attitude is unsatisfactory, but only after warning the teacher in writing, giving him assistance and allowing him a reasonable time to improve;

(m) submit to his board an annual budget for supplies and equipment;

(n) report promptly any serious neglect of duty or infraction of the school rules by a pupil to the parent where the pupil is a minor and otherwise to the pupil;

(o) issue a statement of progress to a pupil withdrawing from the school or to the parent of such pupil where the pupil is a minor;

(p) provide for the guiding and counselling of pupils with respect to their duties, the course of study and, where applicable, the vocations or future educational programs to which the courses of study lead and the requirements for admission thereto;

(q) promote and maintain close co-operation with the residents and, where applicable, the industry and business, of the community;

(r) provide for the placement of pupils eligible for admission; and

(s) where it is proposed to administer to a pupil an individual psychological examination or test, obtain written permission therefor from the parent of the pupil where the pupil is a minor, and otherwise from the pupil.

(3) Where two or more schools operated by a board jointly occupy or use in common a school building or school grounds, the board shall designate which principal has authority over those parts of the building or grounds that the schools occupy or use in common.

(4) Where, after reasonable notice by the principal, a pupil who is an adult, or the parent of a pupil who is a minor, fails to provide the supplies required by the pupil for a course of study, the principal shall promptly notify his board.

(5) A principal shall transmit his reports and recommendations to his board through the appropriate supervisory officer. O. Reg. 704/78, s.12.

THIRD-PARTY ASSISTANCE*

1975-79

	1975-76	1976-77	1977-78	1978-79
Number of negotiations	205	189	210	207
Number of negotiations where a mediator was appointed prior to fact finding	Information not available**	10	35	25
Number of fact-finder appointments	97	71	63	114
Number of negotiations where a mediator was appointed after fact finding	Information not available	29	34	56
Number of arbitrations	8	5	6	7
Number of final-offer selections	5	3	2	1
Number of strikes	6	3	6	3

*Joint negotiations conducted in Metropolitan Toronto were considered as a single negotiation, and a single strike as the case may be.

**A total of 51 mediators was assigned in 1975-76, but no information is available about the timing of such appointments.

APPENDIX VIII

TIMING OF SETTLEMENTS 1976-80*

SETTLEMENT YEAR	1976-77	1977-78	1978-79	1979-80
January	9	0	9	20
February	11	4	9	25
March	13	6	10	30
April	22	11	17	32
May	29	24	25	40
June	62	87	64	54
July	74	101	64	73
August	80	109	67	78
September	108	139	95	91
October	135	155	111	108
November	163	168	134	121
December	181	179	152	135
January	184	181	169	147
February	187	184	176	159
March	192	191	188	170
April	193	194	190	
May	199	198	194	
TOTAL NUMBER OF POSSIBLE SETTLEMENTS	200	200	200	200

* The figures represent the cumulative number of settlements as of the end of the month. Only the timing of settlements for Elementary, Secondary and Roman Catholic Separate School Boards is included in this table. Excluded are approximately 30 settlements annually in District Area School Boards, Protestant Separate School Boards, Isolate Roman Catholic Separate School Boards, Canadian Forces Bases, Hospital and Treatment Centres, and Ontario Hydro Centres. The timing of settlement in these Boards was not recorded throughout the four-year interval. Data for 1975-76 are also not available.

Source: Education Relations Commission.

APPENDIX IX

BILL OF RIGHTS

To illustrate further our intentions in respect to a Bill of Rights, we refer to the following section taken from A. W. R. Carrothers, et al., Canadian Industrial Relations: The Report of the Prime Minister's Task Force on Labour Relations (Ottawa, Information Canada, 1968), pp. 151-52.

> We recommend that legislation prescribe basic procedural rights to be heard, to be tried by an impartial body, to be represented by counsel, to be protected against double jeopardy, to have access to a speedy trial and appeal, and to receive reasoned decision.
>
> We recommend further that legislation guarantee to members the right to run for union office in elections held at regular intervals, to nominate candidates, to vote in union affairs, to attend and participate in union meetings, and to have equal access to union facilities, including the union newspaper, especially during election campaigns. We recommend further that legislation guarantee the right of union members to audited statements of union financial affairs and to possession of the union constitution, and the right of all employees in the bargaining unit to possession of any collective agreement affecting their employment.
>
> Where a person's union membership is to be suspended or terminated by the union against the will of the member, we recommend that the constitution of the union provide machinery for appeal and review. The culmination of this appeal and review procedure should be a Public Review Board constituted in such a way that a decisive voice lies with persons drawn from outside the labour movement. We recommend that groups of unions, through such bodies as the Canadian Labour Congress and the Confederation of National Trade Unions, set up common boards for their affiliated organizations. The composition of such boards should be subject to the approval of the Canada Labour Relations Board. Alternatively, the individual should have the right of appeal to the Board for a review of procedures and for a review of the reasonableness of the substantive rules of the union relating to termination of membership. Rules should not be such as to preclude union members from engaging in otherwise lawful conduct unless that conduct seriously undermines the union's position as a bargaining agent. Thus, for example, dual unionism would not be a legitimate cause for union discipline, especially where one union cannot supply a worker with regular employment opportunities, unless a member is actively engaged in trying to supplant one union by another.

Under forms of union security more advantageous to unions than the agency shop, a union member's access to employment or continuing employment should not be jeopardized because of any loss of union membership until he has exhausted the appeal procedures. In the interim he could be suspended from the union but still be compelled to pay dues and assessments, and still be entitled to fair representation by the union as we define it later.

To avoid short-circuiting internal union appeal procedures, a member should be denied access to either a Public Review Board or the Canada Labour Relations Board until he has exhausted internal procedures, unless he can show that the resulting costs or delay will cause undue hardship. In determining whether such hardship would ensue, it would be relevant for the Public Review Board or the Canada Labour Relations Board to consider the fact that under our previous recommendation no person would lose his job for reasons other than non-payment of dues and assessments until he has exhausted appeal procedures.

We recommend further that either the Public Review Board or the Canada Labour Relations Board be empowered to review, in the manner of the Ontario legislation, union trusteeships where a parent union must notify the Ontario Labour Relations Board of a trusteeship over a subordinate unit and of the terms of the trusteeship as required by that Board, and a twelve-month limitation period is placed on trusteeships without the consent of the Board.